



<p style="text-align: right;">Page 2</p> <p>1</p> <p>2 January 23, 2019</p> <p>3 9:41 a.m.</p> <p>4</p> <p>5</p> <p>6 Videotaped deposition of WENDY EBER,</p> <p>7 held at the offices of Veritext New York City,</p> <p>8 1250 Broadway, New York, New York, pursuant to</p> <p>9 Notice, before Lynne D. Metz, a Shorthand Reporter</p> <p>10 and Notary Public of the State of New York.</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 4</p> <p>1</p> <p>2 A P P E A R A N C E S: (Cont'd):</p> <p>3</p> <p>4 JOHN HERBERT, ESQ. (Telephonically)</p> <p>5 Attorneys for Defendants LESTER EBER and</p> <p>6 WENDY EBER</p> <p>7 P.O. Box 1031</p> <p>8 Tiburone, California 94920</p> <p>9</p> <p>10</p> <p>11 CALIHAN LAW PLLC</p> <p>12 Attorneys for Defendant THE ESTATE of</p> <p>13 ELLIOT W. GUMAER</p> <p>14 16 East Main Street</p> <p>15 Rochester, New York 14614</p> <p>16 BY: ROBERT B. CALIHAN, ESQ.</p> <p>17</p> <p>18</p> <p>19 ALSO PRESENT:</p> <p>20 Wayne Saline - Videographer</p> <p>21 Dan Kleeberg</p> <p>22 Lester Eber</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 3</p> <p>1</p> <p>2 A P P E A R A N C E S:</p> <p>3</p> <p>4 BROOK &amp; ASSOCIATES PLLC</p> <p>5 Attorneys for Plaintiffs</p> <p>6 100 Church Street</p> <p>7 8th Floor</p> <p>8 New York, New York 10007</p> <p>9 BY: BRIAN C. BROOK, ESQ.</p> <p>10</p> <p>11</p> <p>12 UNDERBERG &amp; KESSLER LLP</p> <p>13 Attorneys for Defendants LESTER EBER;</p> <p>14 ALEXBAY, LLC f/k/a LESTER EBER, LLC; EBER</p> <p>15 BROS. &amp; CO., INC.; EBER BROS. WINE AND</p> <p>16 LIQUOR CORPORATION; EBER BROS. WINE AND</p> <p>17 LIQUOR METRO, INC., EBER-CONNECTICUT, LLC;</p> <p>18 and WENDY EBER</p> <p>19 50 Fountain Plaza</p> <p>20 Buffalo, New York 14202</p> <p>21 BY: COLIN D. RAMSEY, ESQ.</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 5</p> <p>1</p> <p>2</p> <p>3</p> <p>4 IT IS HEREBY STIPULATED AND AGREED, by and</p> <p>5 between the attorneys for the respective parties</p> <p>6 herein, that filing and sealing be and the same</p> <p>7 are hereby waived.</p> <p>8 IT IS FURTHER STIPULATED AND AGREED</p> <p>9 that all objections, except as to the form of the</p> <p>10 question, shall be reserved to the time</p> <p>11 of the trial.</p> <p>12 IT IS FURTHER STIPULATED AND AGREED that the</p> <p>13 within deposition may be signed and sworn to</p> <p>14 before any officer authorized to administer an</p> <p>15 oath, with the same force and effect as if signed</p> <p>16 and sworn to before the officer before whom the</p> <p>17 within deposition was taken.</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

<p style="text-align: right;">Page 6</p> <p>1</p> <p>2 THE VIDEOGRAPHER: We are going on the</p> <p>3 record at 9:42 on January 23, 2019. Please</p> <p>4 note the microphones are sensitive and may</p> <p>5 pick up whispering and private</p> <p>6 conversations. Please turn off all cell</p> <p>7 phones or place them away from the</p> <p>8 microphone as they may interfere with the</p> <p>9 deposition audio. Recording will continue</p> <p>10 until all parties agree to go off the</p> <p>11 record.</p> <p>12 This is media unit one of the video</p> <p>13 recorded deposition of Wendy Eber on behalf</p> <p>14 of Eber Brothers Wine and Liquor Metro Inc.</p> <p>15 taken by counsel for plaintiff in the matter</p> <p>16 of Daniel Kleeberg et al versus Lester Eber</p> <p>17 et al filed in the United States District</p> <p>18 Court, Southern District of New York, case</p> <p>19 number 16-CV-9517 (LAK).</p> <p>20 This deposition is being held at</p> <p>21 Veritext located at 1250 Broadway New York,</p> <p>22 New York. My name is Wayne Saline from the</p> <p>23 firm Veritext. I am the videographer. The</p> <p>24 court reporter is Lynne Metz from the firm</p> <p>25 Veritext.</p>	<p style="text-align: right;">Page 8</p> <p>1 W. Eber</p> <p>2 Q. When was the last time you were</p> <p>3 deposed?</p> <p>4 A. I don't remember the exact date.</p> <p>5 Q. Approximately when, ballpark figure?</p> <p>6 A. Between 2014 and 2016.</p> <p>7 Q. So within the last few years, is that</p> <p>8 fair to say?</p> <p>9 A. Yeah, maybe it was a little earlier</p> <p>10 than that.</p> <p>11 Q. So I am going to nonetheless, even</p> <p>12 though you have done this before, go over some of</p> <p>13 the basics before we get to the substance of the</p> <p>14 questioning. The most important thing to remember</p> <p>15 is everything we say is being transcribed. So</p> <p>16 even though there is a videographer, if it doesn't</p> <p>17 end up in the transcript made by the court</p> <p>18 reporter is isn't said. So it is important that</p> <p>19 we try our best to not talk over each other even</p> <p>20 though we know where the other is going.</p> <p>21 Can you do that?</p> <p>22 A. Yes.</p> <p>23 Q. Or at least try.</p> <p>24 Another important thing is to make</p> <p>25 answers verbal and so gestures, nods or even</p>
<p style="text-align: right;">Page 7</p> <p>1 W. Eber</p> <p>2 At this time the attorneys will</p> <p>3 introduce themselves and their affiliation</p> <p>4 for the record. The court reporter will</p> <p>5 swear in the witness and we can proceed.</p> <p>6 MR. BROOK: On behalf of the</p> <p>7 plaintiffs Brian Brook of Brook and</p> <p>8 Associates PLLC.</p> <p>9 MR. RAMSEY: Colin Ramsey, Underberg</p> <p>10 and Kessler on behalf of the Eber</p> <p>11 defendants.</p> <p>12 MR. CALIHAN: Robert Calihan from</p> <p>13 Calihan Law PLLC on behalf of the Estate of</p> <p>14 Elliot Gumaer.</p> <p>15</p> <p>16 W E N D Y E B E R,</p> <p>17 called as a witness, having been first duly</p> <p>18 sworn by the Notary Public (Lynne D. Metz),</p> <p>19 was examined and testified as follows:</p> <p>20 EXAMINATION BY</p> <p>21 MR. BROOK:</p> <p>22 Q. Good morning.</p> <p>23 A. Good morning.</p> <p>24 Q. Have you ever been deposed before?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 9</p> <p>1 W. Eber</p> <p>2 saying aha or uh-uh is not something that makes</p> <p>3 its way into the transcript in a way that's clear</p> <p>4 enough for the court record.</p> <p>5 So occasionally we may get reminded to</p> <p>6 do that; okay, to make verbal answers?</p> <p>7 A. Okay.</p> <p>8 Q. And you are doing a very good job</p> <p>9 waiting for me to finish my question before</p> <p>10 speaking, so that's good at the beginning here.</p> <p>11 One thing just because I know there is</p> <p>12 a lot of stuff to cover here, it is important in</p> <p>13 this deposition that consistent with your oath</p> <p>14 that you provide full answers and so that's what I</p> <p>15 am entitled to in this deposition. So for</p> <p>16 example, if I ask you what you had for breakfast</p> <p>17 and you said orange juice when in fact you had</p> <p>18 orange juice and toast, orange juice would not be</p> <p>19 a full answer.</p> <p>20 Do you understand that?</p> <p>21 A. Yes.</p> <p>22 Q. You are welcome to try to take a break</p> <p>23 at any time whenever you feel like it. It is</p> <p>24 important that you be in a place where you feel</p> <p>25 you can answer the questions effectively. So if</p>

<p style="text-align: right;">Page 10</p> <p>1 W. Eber</p> <p>2 you need a break for any reason you don't have to</p> <p>3 say why, just ask for a break. The only thing I</p> <p>4 ask is if I have a question pending that you</p> <p>5 answer the question before we take a break; okay?</p> <p>6 A. Okay.</p> <p>7 Q. Is there any reason such as not</p> <p>8 getting enough sleep or being on any prescription</p> <p>9 medications that would affect your ability to</p> <p>10 testify truthfully and fully today?</p> <p>11 A. No.</p> <p>12 Q. And you are testifying this morning on</p> <p>13 behalf of the company corporation Eber Brothers</p> <p>14 Wine and Liquor Metro Inc.; is that right?</p> <p>15 A. That is right.</p> <p>16 MR. BROOK: Let's go ahead and mark</p> <p>17 our first exhibit. This is Plaintiffs' 10.</p> <p>18 I am going to show you what is going to be</p> <p>19 marked as Plaintiffs' Exhibit 10. It is a</p> <p>20 copy of the deposition notice for today's</p> <p>21 deposition.</p> <p>22 (Plaintiffs' Exhibit 10, a copy of</p> <p>23 the deposition notice for today's</p> <p>24 deposition, marked for identification, as of</p> <p>25 this date.)</p>	<p style="text-align: right;">Page 12</p> <p>1 W. Eber</p> <p>2 Q. Did you do anything else?</p> <p>3 A. I reviewed some documents.</p> <p>4 Q. Did you do anything else?</p> <p>5 A. No. I don't remember doing anything</p> <p>6 else.</p> <p>7 Q. Did you speak to any other persons who</p> <p>8 had worked with Eber Metro or let me first</p> <p>9 withdraw that question and do something I should</p> <p>10 have done a minute ago, which was because the name</p> <p>11 of the company is very long here I am going to</p> <p>12 refer to Eber Brothers Wine and Liquor Metro Inc.</p> <p>13 as Eber Metro today.</p> <p>14 Is that okay? Do you understand that?</p> <p>15 A. Yes.</p> <p>16 Q. I would like you to do the same.</p> <p>17 Can you do that please?</p> <p>18 A. Can you repeat?</p> <p>19 Q. So use Eber Metro, when referring to</p> <p>20 the company we are talking about for the</p> <p>21 deposition today.</p> <p>22 A. Yes.</p> <p>23 Q. And am I correct in understanding</p> <p>24 there is a also an entity that was called Eber</p> <p>25 Metro LLC?</p>
<p style="text-align: right;">Page 11</p> <p>1 W. Eber</p> <p>2 Q. Do you have Exhibit 10 in front of</p> <p>3 you?</p> <p>4 A. I do.</p> <p>5 Q. Have you seen this before?</p> <p>6 A. Yes, I believe it was e-mailed to me</p> <p>7 but I didn't read the whole thing.</p> <p>8 Q. Take a look at the second page of the</p> <p>9 exhibit. It says attachment A at the top.</p> <p>10 Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. And there is a list of five topics</p> <p>13 with some sub topics.</p> <p>14 Do you see that?</p> <p>15 MR. RAMSEY: You don't have to read</p> <p>16 them all. Do you see there are five</p> <p>17 different categories at this point?</p> <p>18 A. Yes.</p> <p>19 Q. And have you seen or read these topics</p> <p>20 before today's deposition? Have you read this</p> <p>21 list of topics before today's deposition?</p> <p>22 A. No.</p> <p>23 Q. What did you do to prepare for today's</p> <p>24 deposition?</p> <p>25 A. I spoke to my lawyers.</p>	<p style="text-align: right;">Page 13</p> <p>1 W. Eber</p> <p>2 A. Yes.</p> <p>3 Q. So if you are at any time referring to</p> <p>4 that entity I would ask you to please specify the</p> <p>5 LLC designation for it so we can distinguish that</p> <p>6 entity from the corporation that's being deposed</p> <p>7 today; okay?</p> <p>8 A. Right.</p> <p>9 Can you repeat what you want?</p> <p>10 Q. Sure.</p> <p>11 A. Yeah.</p> <p>12 Q. For today's deposition when referring</p> <p>13 to Eber Brothers Wine and Liquor Metro Inc. we are</p> <p>14 both going to refer to it as Eber Metro; okay?</p> <p>15 A. Okay.</p> <p>16 Q. Then if at any time either one of us</p> <p>17 is going to refer to Eber Metro LLC, we will be</p> <p>18 sure to say LLC to distinguish it; okay?</p> <p>19 A. Okay.</p> <p>20 Q. So did you speak with any other</p> <p>21 persons who had worked with Eber Metro to prepare</p> <p>22 for your deposition today?</p> <p>23 A. I did speak with Glenn Sturm not in</p> <p>24 preparation for this but I did speak with him</p> <p>25 before today.</p>

<p style="text-align: right;">Page 14</p> <p>1 W. Eber</p> <p>2 Q. When was that?</p> <p>3 A. Like before Christmas.</p> <p>4 Q. And did it relate to today's</p> <p>5 deposition?</p> <p>6 A. No, not my deposition, no.</p> <p>7 Q. Did it relate to the deposition of</p> <p>8 Eber Metro?</p> <p>9 MR. RAMSEY: I am just going to stop</p> <p>10 you there.</p> <p>11 Were you consulting with legal advice</p> <p>12 or you were just having conversation more</p> <p>13 general?</p> <p>14 THE WITNESS: Just conversation.</p> <p>15 MR. RAMSEY: Go ahead. Any legal</p> <p>16 advice is privileged, but go ahead.</p> <p>17 BY MR. BROOK:</p> <p>18 Q. So what was the topic of discussion</p> <p>19 with Glenn Sturm?</p> <p>20 A. Just his general health and what he</p> <p>21 was doing Christmas. It was kind of general</p> <p>22 things with his family.</p> <p>23 Q. And had he been associated with or</p> <p>24 working with Eber Metro at some time in the past?</p> <p>25 A. He had worked with us, yes.</p>	<p style="text-align: right;">Page 16</p> <p>1 W. Eber</p> <p>2 Q. Looking at still Exhibit 10 in front</p> <p>3 of you, the attachment A, I am going to go through</p> <p>4 the topics and make sure we understand what you</p> <p>5 are supposed to be testifying about today. So</p> <p>6 topic one is "Any transactions referenced,</p> <p>7 directly or indirectly, in the updated proposed</p> <p>8 third amended complaint served on December 21,</p> <p>9 2018."</p> <p>10 Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. Have you seen a copy of the updated</p> <p>13 proposed third amended complaint that's referenced</p> <p>14 there?</p> <p>15 A. I saw a red line version of it.</p> <p>16 Is that what you are referring to?</p> <p>17 Q. If you saw a red line version of it</p> <p>18 yes, that would have it in there. I don't know</p> <p>19 for sure if it was the exact document but it was</p> <p>20 recent that it showed additional allegations.</p> <p>21 Did you see that?</p> <p>22 A. Yes. I saw that one.</p> <p>23 Q. And did you review the entire updated</p> <p>24 proposed third amended complaint or just the</p> <p>25 portions that had been red lined?</p>
<p style="text-align: right;">Page 15</p> <p>1 W. Eber</p> <p>2 Q. In what capacity?</p> <p>3 A. As an attorney.</p> <p>4 Q. And in any other capacity?</p> <p>5 A. Strategic consultant.</p> <p>6 Q. Was he compensated for his work as an</p> <p>7 attorney in strategic consulting?</p> <p>8 MR. RAMSEY: Form.</p> <p>9 Go ahead and answer.</p> <p>10 A. Yes.</p> <p>11 Q. How so?</p> <p>12 A. He had been paid.</p> <p>13 Q. He was paid cash?</p> <p>14 A. He had been paid some cash, yes.</p> <p>15 Q. Was he paid in any other way?</p> <p>16 MR. RAMSEY: Specifically with respect</p> <p>17 to Metro at this point?</p> <p>18 MR. BROOK: Yes.</p> <p>19 A. No.</p> <p>20 Q. Was the payment made to Glenn Sturm</p> <p>21 directly or to a law firm?</p> <p>22 A. Law firm.</p> <p>23 Q. Was that the Nelson Mullins Riley</p> <p>24 firm?</p> <p>25 A. I believe so.</p>	<p style="text-align: right;">Page 17</p> <p>1 W. Eber</p> <p>2 A. There were two versions.</p> <p>3 Which one are you referring to?</p> <p>4 Q. So I will withdraw the question.</p> <p>5 Are you aware that plaintiffs have</p> <p>6 added additional allegations to their complaint in</p> <p>7 the last few weeks and have asked the court to</p> <p>8 include those in this lawsuit?</p> <p>9 A. Yes.</p> <p>10 Q. And you are aware of, at least in</p> <p>11 general terms, of what transactions those are that</p> <p>12 had been put into the new proposed complaint?</p> <p>13 A. I don't remember all of them.</p> <p>14 Q. So in preparing for your testimony</p> <p>15 today, is it fair to say you did not go through</p> <p>16 the proposed third amended complaint to review</p> <p>17 each transaction?</p> <p>18 MR. RAMSEY: Form.</p> <p>19 A. What do you mean?</p> <p>20 Q. So in preparing for today's testimony,</p> <p>21 did you go through the updated proposed third</p> <p>22 amended complaint or any version of plaintiffs'</p> <p>23 complaint to check and make sure you were familiar</p> <p>24 with any transactions that involved Eber Metro?</p> <p>25 A. I read it.</p>

5 (Pages 14 - 17)

<p style="text-align: right;">Page 18</p> <p>1 W. Eber</p> <p>2 Q. When was the last time you read it?</p> <p>3 A. Which version?</p> <p>4 Q. Any version of the complaint.</p> <p>5 When was the last time you read that?</p> <p>6 A. I think it was a couple of weeks ago.</p> <p>7 I don't really remember the exact date.</p> <p>8 Q. Let's go to the second topic on</p> <p>9 attachment A. It says "The formation and</p> <p>10 corporate governance of Eber Metro."</p> <p>11 Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. What did you do to prepare for</p> <p>14 testimony on that topic?</p> <p>15 A. I don't remember.</p> <p>16 Q. When were you first employed by or</p> <p>17 working with Eber Metro?</p> <p>18 A. Somewhere in the early two thousands.</p> <p>19 Q. Was Eber Metro already a going concern</p> <p>20 at the time you started working with it or were</p> <p>21 you involved in forming the company?</p> <p>22 A. It was a going -- it was already up</p> <p>23 and running.</p> <p>24 Q. Do you know when Eber Metro was</p> <p>25 formed?</p>	<p style="text-align: right;">Page 20</p> <p>1 W. Eber</p> <p>2 deposition?</p> <p>3 A. Yes.</p> <p>4 Q. What did you discuss?</p> <p>5 MR. RAMSEY: Anything not in the</p> <p>6 presence of counsel. Go ahead.</p> <p>7 A. The time. We thought it was at 10</p> <p>8 o'clock and changed to 9 o'clock.</p> <p>9 Q. Anything else?</p> <p>10 A. And the location. The location.</p> <p>11 Q. Did you and Lester discuss anything</p> <p>12 about Eber Metro's business or history in your</p> <p>13 preparation for today's deposition?</p> <p>14 A. No.</p> <p>15 Q. Topic 3 back on Exhibit 10. It says</p> <p>16 "The acquisition of Slocum and Sons in 2005</p> <p>17 including without limitation the terms of the</p> <p>18 transactions, the negotiations for the</p> <p>19 transactions, the basis for the purchase price</p> <p>20 i.e., the valuation of the business both as a</p> <p>21 whole and as to its particular entities."</p> <p>22 Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. Were you personally involved in the</p> <p>25 acquisition of Slocum and Sons in 2005?</p>
<p style="text-align: right;">Page 19</p> <p>1 W. Eber</p> <p>2 A. I would say, I believe it was mid</p> <p>3 nineties, '95, '96.</p> <p>4 Q. What was the reason for Eber Metro's</p> <p>5 formation?</p> <p>6 A. I don't know. It was started before I</p> <p>7 started.</p> <p>8 Q. Who would know the reason for Eber</p> <p>9 Metro's formation?</p> <p>10 MR. RAMSEY: If you know.</p> <p>11 A. John Ryan would know.</p> <p>12 MR. CALIHAN: I am sorry.</p> <p>13 Who?</p> <p>14 A. John Ryan would know and my father</p> <p>15 would probably know.</p> <p>16 Q. Did you speak to either of those</p> <p>17 individuals to prepare for this deposition?</p> <p>18 A. I have spoken to Lester regarding --</p> <p>19 sorry.</p> <p>20 Q. Go ahead. I didn't mean to cut you</p> <p>21 off.</p> <p>22 What did you speak to Lester</p> <p>23 regarding?</p> <p>24 A. Not necessarily about the formation.</p> <p>25 Q. And did you speak to him about today's</p>	<p style="text-align: right;">Page 21</p> <p>1 W. Eber</p> <p>2 A. No.</p> <p>3 Q. Did you do anything to prepare to</p> <p>4 testify on this topic number 3?</p> <p>5 MR. RAMSEY: Form.</p> <p>6 A. I searched for documents for it.</p> <p>7 Q. When did you do that?</p> <p>8 A. When you initially asked for the</p> <p>9 documents and then I found some subsequently.</p> <p>10 Q. Are you referring to the documents for</p> <p>11 the merger and acquisition?</p> <p>12 A. What merger and acquisition?</p> <p>13 Q. Let's step back.</p> <p>14 Slocum and Sons were acquired or</p> <p>15 certain of its entities were acquired and then</p> <p>16 merged into Eber entities in 2005; is that right?</p> <p>17 A. I wasn't involved in that transaction.</p> <p>18 Q. So other than having found documents</p> <p>19 for it, are you able to testify today about the</p> <p>20 terms or the negotiations for that transaction?</p> <p>21 A. No. I was not involved in that.</p> <p>22 MR. BROOK: I am going to briefly</p> <p>23 pause on the question of the witness and ask</p> <p>24 counsel are you anticipating another witness</p> <p>25 on behalf of Eber Metro to answer questions</p>



<p style="text-align: right;">Page 22</p> <p>1 W. Eber</p> <p>2 that have been noticed?</p> <p>3 MR. RAMSEY: We have got a limited</p> <p>4 universe of people we can produce and they</p> <p>5 are both here and you are deposing one</p> <p>6 tomorrow. So if you can't get a question</p> <p>7 out this witness you are welcome to ask</p> <p>8 Lester Eber tomorrow, but that's the</p> <p>9 universe of witnesses.</p> <p>10 MR. BROOK: That's not how 30(b)6</p> <p>11 depositions are supposed to work, but we</p> <p>12 will reserve our rights and we don't have to</p> <p>13 argue about it right now.</p> <p>14 MR. RAMSEY: Fair enough.</p> <p>15 Q. Topic 4 on Exhibit 10 says "The</p> <p>16 nature, governance and financial performance of</p> <p>17 each business that was at any time controlled by</p> <p>18 Eber Metro."</p> <p>19 Do you see that?</p> <p>20 A. Eber Metro Inc. you mean?</p> <p>21 Q. Yes, all this is Eber Metro Inc.</p> <p>22 A. What is your question?</p> <p>23 Q. I just asked if you saw that.</p> <p>24 A. I see that, yes.</p> <p>25 Q. Did you do anything to prepare for</p>	<p style="text-align: right;">Page 24</p> <p>1 W. Eber</p> <p>2 looking at the financial records for any business</p> <p>3 that was ever controlled by Eber Metro?</p> <p>4 A. We did look at some documents for the</p> <p>5 valuation expert.</p> <p>6 Q. When was that?</p> <p>7 A. I would say last couple of months.</p> <p>8 Last month.</p> <p>9 Q. Can you name for me the different</p> <p>10 businesses that have been controlled by Eber Metro</p> <p>11 at any time in the last ten years?</p> <p>12 A. Yes.</p> <p>13 Q. Please do so.</p> <p>14 A. Eber -- let's see. There was ENDC</p> <p>15 which became Eber Metro LLC. Eber Connecticut.</p> <p>16 Eber Rhode Island. I don't remember anything</p> <p>17 else.</p> <p>18 Q. Was a company called Slocum and Sons</p> <p>19 of Maine Inc. ever controlled by Eber Metro?</p> <p>20 A. No, no.</p> <p>21 Q. Did Eber Metro ever have any sort of a</p> <p>22 interest in, Slocum and Sons of Maine, Inc. such</p> <p>23 as an option to purchase it?</p> <p>24 A. I don't remember. It may have. I</p> <p>25 don't specifically remember. It may have. I was</p>
<p style="text-align: right;">Page 23</p> <p>1 W. Eber</p> <p>2 testimony today on that topic?</p> <p>3 MR. RAMSEY: Form.</p> <p>4 MR. BROOK: Basis.</p> <p>5 MR. RAMSEY: I don't know what you</p> <p>6 mean by prepare.</p> <p>7 MR. BROOK: I am fine with the record</p> <p>8 saying that.</p> <p>9 Q. Go ahead. You can answer the question</p> <p>10 if you understand it.</p> <p>11 A. No.</p> <p>12 Q. So did you review any of the financial</p> <p>13 records of Eber Metro in preparation for your</p> <p>14 testimony today?</p> <p>15 A. Not specifically for preparation for</p> <p>16 today, but I did pull documents that were provided</p> <p>17 to you.</p> <p>18 Q. And when was that?</p> <p>19 A. You know, when this lawsuit started.</p> <p>20 Throughout the time that it started we also pulled</p> <p>21 some documents for our valuation expert.</p> <p>22 Q. When was the last time that you recall</p> <p>23 looking at any of Eber Metro's financial records</p> <p>24 or -- I will withdraw the question.</p> <p>25 When is the last time you remember</p>	<p style="text-align: right;">Page 25</p> <p>1 W. Eber</p> <p>2 not involved in that transaction from 2005.</p> <p>3 Q. So let's step back.</p> <p>4 What was your first position with Eber</p> <p>5 Metro?</p> <p>6 A. I was a divisional accounting manager</p> <p>7 type person.</p> <p>8 Q. And were you compensated for that</p> <p>9 position by Eber Metro or another Eber entity?</p> <p>10 A. By Eber Metro I believe.</p> <p>11 Q. And what was your compensation?</p> <p>12 A. I don't remember the exact amount.</p> <p>13 Q. So it was some amount of a salary; is</p> <p>14 that right?</p> <p>15 A. Yes.</p> <p>16 Q. Did you also have any incentive</p> <p>17 compensation such as a bonus?</p> <p>18 A. No, no.</p> <p>19 Q. And what was the next position that</p> <p>20 you had after that with Eber Metro?</p> <p>21 A. It was financial analyst type</p> <p>22 position.</p> <p>23 Q. Approximately, when was that that you</p> <p>24 held that position?</p> <p>25 A. Sorry. I am just trying to think</p>

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<p style="text-align: right;">Page 26</p> <p>1 W. Eber</p> <p>2 here.</p> <p>3 2003-ish, 2004. 2004-issue.</p> <p>4 Q. At some point did you move into some</p> <p>5 sort of management role with Eber Metro?</p> <p>6 A. No.</p> <p>7 Q. What is your current position?</p> <p>8 A. Well, at some point later yes.</p> <p>9 Q. When was that?</p> <p>10 A. In approximately like 2007, 2008</p> <p>11 maybe. 2007, 2007-issue, 2008.</p> <p>12 Q. What was that position?</p> <p>13 A. I became the secretary and treas --</p> <p>14 uh, CFO.</p> <p>15 Q. And at the time, who was it that you</p> <p>16 were reporting to for Eber Metro?</p> <p>17 A. When?</p> <p>18 Q. At that time once you became secretary</p> <p>19 and CFO, who did you report to?</p> <p>20 A. Lester Eber.</p> <p>21 Q. Anyone else?</p> <p>22 A. Everyone else had left.</p> <p>23 Q. And were you at that time also on the</p> <p>24 board of directors?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 28</p> <p>1 W. Eber</p> <p>2 Q. Now you mentioned a couple of</p> <p>3 companies or three companies that were controlled</p> <p>4 by Eber Metro.</p> <p>5 The first you mentioned was called</p> <p>6 ENDC and is now referred to as Eber Metro LLC; is</p> <p>7 that right?</p> <p>8 A. Correct.</p> <p>9 Q. What was the nature of that company's</p> <p>10 business?</p> <p>11 A. Liquor distribution in like the New</p> <p>12 York, downstate New York business.</p> <p>13 Q. So like the New York City Metropolitan</p> <p>14 area; is that right?</p> <p>15 A. Yes.</p> <p>16 Q. Were you involved with ENDC in any</p> <p>17 direct way?</p> <p>18 A. No.</p> <p>19 Q. Is ENDC still an operating entity?</p> <p>20 A. There are no operations, no.</p> <p>21 Q. When did it cease operating?</p> <p>22 A. 2007 I believe. I don't remember.</p> <p>23 Q. Why did it cease operating at that</p> <p>24 time?</p> <p>25 A. It went out of business.</p>
<p style="text-align: right;">Page 27</p> <p>1 W. Eber</p> <p>2 Q. Did you replace someone else who had</p> <p>3 left as director?</p> <p>4 A. Yes.</p> <p>5 Q. Who was that?</p> <p>6 A. Lisa Seminock.</p> <p>7 MR. CALIHAN: I couldn't hear.</p> <p>8 A. Lisa Seminock.</p> <p>9 Q. Who else was on the board of directors</p> <p>10 at that time once you joined it?</p> <p>11 A. Lester Eber and Mike Gumaer. Elliot</p> <p>12 is his formal name.</p> <p>13 Q. What is your position today with Eber</p> <p>14 Metro?</p> <p>15 A. Eber Metro I am the CFO and secretary.</p> <p>16 Q. So you have -- sorry. Go ahead.</p> <p>17 A. Board member.</p> <p>18 Q. Did you -- withdrawn.</p> <p>19 So you stayed in the same position</p> <p>20 with Eber Metro since approximately 2007 or 2008;</p> <p>21 is that right?</p> <p>22 A. Yeah.</p> <p>23 Q. And is the president of the company</p> <p>24 still Lester Eber?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 29</p> <p>1 W. Eber</p> <p>2 Q. What caused it to go out of business?</p> <p>3 A. Southern coming in to the market and</p> <p>4 putting it basically out of business.</p> <p>5 Q. And you are referring to by Southern</p> <p>6 as Southern Wine and Spirits; is that correct?</p> <p>7 A. Correct.</p> <p>8 Q. And was ENDC a partnership or a joint</p> <p>9 venture with another company in addition to Eber</p> <p>10 Brothers?</p> <p>11 A. I don't really know. I don't know the</p> <p>12 details of that company.</p> <p>13 Q. What does ENDC stand for?</p> <p>14 A. I don't know for sure.</p> <p>15 Q. What's your best guess?</p> <p>16 MR. CALIHAN: Form.</p> <p>17 MR. RAMSEY: Don't guess. If you have</p> <p>18 an understanding, but don't guess.</p> <p>19 MR. BROOK: Fair enough.</p> <p>20 Q. What is your best understanding of</p> <p>21 what ENDC stands for?</p> <p>22 A. National Distributing Company.</p> <p>23 Q. And that is another wine and liquor</p> <p>24 distributor; is that right?</p> <p>25 A. Yes.</p>

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<p style="text-align: right;">Page 30</p> <p>1 W. Eber</p> <p>2 Q. And does Eber Metro have any</p> <p>3 continuing relationship with National Distributing</p> <p>4 Company at this time?</p> <p>5 A. No.</p> <p>6 Q. When did it stop working with National</p> <p>7 Distributing Company?</p> <p>8 A. I don't remember. It went out of</p> <p>9 business.</p> <p>10 Q. Have you yourself ever interacted with</p> <p>11 anyone from National Distributing Company?</p> <p>12 A. I met one of the owners.</p> <p>13 Q. When was that?</p> <p>14 A. I don't remember.</p> <p>15 Q. What was his or her name?</p> <p>16 A. Chris Carlos.</p> <p>17 MR. RAMSEY: Keep your voice up.</p> <p>18 Q. What was the purpose of your meeting?</p> <p>19 A. I don't remember.</p> <p>20 Q. Was anyone else there on behalf of</p> <p>21 Eber Metro or any of its affiliates?</p> <p>22 A. I don't remember.</p> <p>23 Q. Was ENDC a profitable enterprise?</p> <p>24 A. I don't know.</p> <p>25 Q. You mentioned Eber Rhode Island;</p>	<p style="text-align: right;">Page 32</p> <p>1 W. Eber</p> <p>2 operating?</p> <p>3 A. Can I ask a question to you?</p> <p>4 Q. Yes. If you don't understand any of</p> <p>5 my questions you can always ask me a question to</p> <p>6 clarify.</p> <p>7 A. Like a year period like --</p> <p>8 MR. RAMSEY: If you can give a range.</p> <p>9 Give your best approximation of when they no</p> <p>10 longer operated.</p> <p>11 A. 2007 or 2008. Something like that.</p> <p>12 Q. Did you personally have any direct</p> <p>13 involvement in Eber Rhode Island's business?</p> <p>14 A. No.</p> <p>15 Q. Who was in charge of Eber Rhode Island</p> <p>16 when it was last operating?</p> <p>17 A. I mean I don't remember. I don't</p> <p>18 know. I don't know.</p> <p>19 Q. Do you know whether Eber Rhode Island</p> <p>20 was a profitable enterprise?</p> <p>21 A. I don't believe so, but I don't know</p> <p>22 specifics.</p> <p>23 Q. Does Eber Metro still have any</p> <p>24 documents that its retained concerning the</p> <p>25 operations or financial performance of Eber Rhode</p>
<p style="text-align: right;">Page 31</p> <p>1 W. Eber</p> <p>2 right?</p> <p>3 A. Yes.</p> <p>4 Q. What is the nature of that entity's</p> <p>5 business?</p> <p>6 A. Distribution of wine in Rhode Island.</p> <p>7 It was.</p> <p>8 Q. So it is no longer operating; is that</p> <p>9 right?</p> <p>10 A. No.</p> <p>11 Q. When did it stop operating?</p> <p>12 A. I don't remember the exact date.</p> <p>13 Sorry.</p> <p>14 Q. So in this deposition when I ask</p> <p>15 questions about when something occurred, I am not</p> <p>16 asking for the exact date necessarily. If you</p> <p>17 know the exact date you should say it, but if you</p> <p>18 don't know I am asking for the best approximation</p> <p>19 you can have. So if you remember the month and</p> <p>20 year you can say the month and year. If you</p> <p>21 remember the year please say the year. If it is a</p> <p>22 season within a two-year period, winter 2008, 2009</p> <p>23 you can say that.</p> <p>24 So with that clarification of what I</p> <p>25 am asking for, when did Eber Rhode Island stop</p>	<p style="text-align: right;">Page 33</p> <p>1 W. Eber</p> <p>2 Island?</p> <p>3 A. I don't remember. I don't know. I</p> <p>4 don't remember.</p> <p>5 Q. Now the third entity was Eber</p> <p>6 Connecticut.</p> <p>7 On that company is it fair to say you</p> <p>8 do have a lot more personal knowledge?</p> <p>9 A. Yes.</p> <p>10 Q. And because we are deposing Eber</p> <p>11 Connecticut later we will address that one later.</p> <p>12 So continuing to look at Exhibit 10,</p> <p>13 the fifth topic listed is "The relationships with</p> <p>14 and any transactions between Eber Metro and any of</p> <p>15 the following persons or entities including their</p> <p>16 subsidiaries, employees, officers, directors,</p> <p>17 managers, owners or other affiliates." And it has</p> <p>18 a list of ten or 11 names.</p> <p>19 Do you see that?</p> <p>20 A. What are you asking?</p> <p>21 MR. RAMSEY: Do you see that right</p> <p>22 now?</p> <p>23 Q. Do you see that on the page?</p> <p>24 MR. RAMSEY: Number 5.</p> <p>25 A. Yes, I see it.</p>

<p style="text-align: right;">Page 34</p> <p>1 W. Eber</p> <p>2 Q. So were you given at least this list</p> <p>3 of names or some of these names prior to today's</p> <p>4 deposition so you can look and see if there had</p> <p>5 been any transactions between Eber Metro and those</p> <p>6 entities or persons?</p> <p>7 MR. RAMSEY: Form.</p> <p>8 A. I haven't seen this list before today.</p> <p>9 It may have been e-mailed to me, but I don't</p> <p>10 recall seeing it.</p> <p>11 Q. So let's look at letter A there is the</p> <p>12 Allen Eber Trust.</p> <p>13 Do you know what that is?</p> <p>14 A. Yes.</p> <p>15 Q. What is the Allen Eber Trust?</p> <p>16 A. It is a trust for Allen Eber.</p> <p>17 Q. And how was it created?</p> <p>18 A. When -- how was it created, is that</p> <p>19 your question?</p> <p>20 Q. Yes. If you know.</p> <p>21 A. I don't know. I mean it was created.</p> <p>22 I might have been two years old when it was</p> <p>23 created. When he died. When Allen Eber died.</p> <p>24 Q. Is there any relationship at this time</p> <p>25 between the Allen Eber Trust and Eber Metro?</p>	<p style="text-align: right;">Page 36</p> <p>1 W. Eber</p> <p>2 structure of Eber Brothers Wine and Liquor</p> <p>3 Corporation and its operating affiliates.</p> <p>4 Do you see that?</p> <p>5 MR. RAMSEY: He wants to know if you</p> <p>6 see the top.</p> <p>7 A. Yes.</p> <p>8 Q. And do you recognize this document?</p> <p>9 A. This specific document?</p> <p>10 Q. Yes.</p> <p>11 Do you recognize what it is?</p> <p>12 A. Current corporate structure of Eber</p> <p>13 Brothers Wine and Liquor Corporation and its</p> <p>14 operating affiliates is the title.</p> <p>15 Q. And this is an organizational chart;</p> <p>16 is that a fair description of it?</p> <p>17 A. Yes.</p> <p>18 Q. And have you seen this particular</p> <p>19 organizational chart before? If you are not sure</p> <p>20 you can say you are not sure.</p> <p>21 A. I am not sure.</p> <p>22 Q. Have you had a chance to look at the</p> <p>23 organizational chart, the substance of it and the</p> <p>24 different branches?</p> <p>25 A. Can I look at it now?</p>
<p style="text-align: right;">Page 35</p> <p>1 W. Eber</p> <p>2 MR. RAMSEY: Form.</p> <p>3 A. Can you ask the question again?</p> <p>4 Q. Sure. Let's step back.</p> <p>5 At the time when you first became</p> <p>6 secretary and CFO of Eber Metro, what was the</p> <p>7 relationship between Eber Metro and the Allen Eber</p> <p>8 Trust?</p> <p>9 A. There was an ownership structure with</p> <p>10 the trust.</p> <p>11 Q. So the Allen Eber Trust was either</p> <p>12 directly or indirectly an owner of Eber Metro; is</p> <p>13 that what you are saying?</p> <p>14 A. Yes.</p> <p>15 MR. BROOK: Let's mark our next</p> <p>16 exhibit as Plaintiffs' 11.</p> <p>17 (Plaintiffs' Exhibit 11, a document</p> <p>18 that's described at the top as current</p> <p>19 corporate structure of Eber Brothers Wine</p> <p>20 and Liquor Corporation and its operating</p> <p>21 affiliates, marked for identification, as of</p> <p>22 this date.)</p> <p>23 Q. So I am showing you what has been</p> <p>24 marked as Exhibit 11. It is a document that's</p> <p>25 described at the top as current corporate</p>	<p style="text-align: right;">Page 37</p> <p>1 W. Eber</p> <p>2 Q. Yes. It is right in front of you to</p> <p>3 do so.</p> <p>4 While you are looking at this, I would</p> <p>5 like you to consider whether this is a accurate</p> <p>6 depiction of the corporate structure of Eber</p> <p>7 Brothers Wine and Liquor Corporation, its</p> <p>8 operating affiliates at any particular point in</p> <p>9 time and let me know when you have had a chance to</p> <p>10 examine it and determine whether it is accurate.</p> <p>11 Do you need more time with the</p> <p>12 document?</p> <p>13 A. Yes.</p> <p>14 Okay.</p> <p>15 Q. Is this an accurate depiction of the</p> <p>16 corporate structure that existed at approximately</p> <p>17 the time when you first became CFO and secretary</p> <p>18 of Eber Metro?</p> <p>19 A. No.</p> <p>20 Q. What is different about it?</p> <p>21 A. I believe I became CFO before the</p> <p>22 Eder-Goodman 15 percent ownership.</p> <p>23 Q. So at the time that you became CFO and</p> <p>24 secretary Eber Metro owned one hundred percent of</p> <p>25 Eber Connecticut; is that right?</p>

<p style="text-align: right;">Page 38</p> <p>1 W. Eber</p> <p>2 A. I believe so yes, my recollection.</p> <p>3 Q. At some point afterwards 15 percent of</p> <p>4 its interest in Eber Connecticut was sold to</p> <p>5 Eder-Goodman LLC; is that right?</p> <p>6 A. Yes.</p> <p>7 Q. So is this corporate structure an</p> <p>8 accurate depiction of the corporate structure that</p> <p>9 actually existed for Eber Metro and its affiliates</p> <p>10 for the time period immediately after the</p> <p>11 Eder-Goodman acquisition of 15 percent of Eber</p> <p>12 Connecticut?</p> <p>13 A. I am sorry.</p> <p>14 Can you repeat that question?</p> <p>15 Q. Sure.</p> <p>16 So is this document, to the best of</p> <p>17 your knowledge and belief, an accurate depiction</p> <p>18 of the corporate structure of Eber Brothers Wine</p> <p>19 and Liquor Corporation and its operating</p> <p>20 affiliates at the time immediately after the</p> <p>21 Eder-Goodman LLC transaction.</p> <p>22 A. Was that a different question than you</p> <p>23 asked?</p> <p>24 Q. It was.</p> <p>25 A. Sorry.</p>	<p style="text-align: right;">Page 40</p> <p>1 W. Eber</p> <p>2 A. I believe in 2010 there was a sale of</p> <p>3 six percent.</p> <p>4 Q. Six percent of what?</p> <p>5 A. Of Connecticut.</p> <p>6 Q. And who was the six percent sold to?</p> <p>7 A. Polebridge Bowman.</p> <p>8 Q. Who or what is Polebridge Bowman?</p> <p>9 A. Polebridge Bowman is Glenn Sturm.</p> <p>10 Q. Who is Glenn Sturm again?</p> <p>11 A. He is an attorney.</p> <p>12 Q. And so he also invested in Eber</p> <p>13 Connecticut; is that right?</p> <p>14 MR. RAMSEY: Form.</p> <p>15 A. He yeah, and also provided legal</p> <p>16 advice too.</p> <p>17 Q. How much did he pay for six percent of</p> <p>18 Eber Connecticut?</p> <p>19 A. He paid 350,000 dollars. He had a</p> <p>20 note.</p> <p>21 Q. What do you mean he had a note?</p> <p>22 A. A note payable.</p> <p>23 Q. Referring to a promissory note?</p> <p>24 A. Yes.</p> <p>25 Q. And who issued or who is the</p>
<p style="text-align: right;">Page 39</p> <p>1 W. Eber</p> <p>2 Q. So, you heard enough of my last</p> <p>3 question before that to know it was a little</p> <p>4 different. I had assumed that you hadn't</p> <p>5 understood some part of my question so.</p> <p>6 A. I just got confused.</p> <p>7 Q. Is this -- let's step back.</p> <p>8 When was the Eder-Goodman LLC</p> <p>9 transaction?</p> <p>10 MR. RAMSEY: If you don't know a year</p> <p>11 just give a range like we talked about</p> <p>12 before.</p> <p>13 A. Approximately, 2008-ish.</p> <p>14 Q. So is this an accurate depiction of</p> <p>15 the corporate structure for Eber Brothers and its</p> <p>16 affiliates as of 2009?</p> <p>17 A. Yes.</p> <p>18 Q. At some point did this corporate</p> <p>19 structure, at some point after 2009, did this</p> <p>20 corporate structure change?</p> <p>21 A. Yes.</p> <p>22 Q. When was that? I will withdraw the</p> <p>23 last question.</p> <p>24 What was the event that caused a</p> <p>25 change in this corporate structure?</p>	<p style="text-align: right;">Page 41</p> <p>1 W. Eber</p> <p>2 promissory note issued to?</p> <p>3 MR. RAMSEY: If you know.</p> <p>4 A. Yeah, I don't remember. I am not</p> <p>5 certain.</p> <p>6 Q. Did he put in any actual cash for the</p> <p>7 six percent?</p> <p>8 MR. RAMSEY: Form.</p> <p>9 A. No.</p> <p>10 Q. Who negotiated the Polebridge Bowman</p> <p>11 six percent deal on behalf of Eber Metro?</p> <p>12 A. I was involved in that.</p> <p>13 Q. Were you the primary person involved</p> <p>14 in it or was someone else more involved?</p> <p>15 A. I consulted with -- who? Sorry.</p> <p>16 Can you just repeat that?</p> <p>17 Q. Sure.</p> <p>18 Was there anyone else besides yourself</p> <p>19 who was involved on behalf of Eber Metro in the</p> <p>20 Polebridge Bowman deal?</p> <p>21 A. Yes.</p> <p>22 Q. Who?</p> <p>23 A. Our attorneys.</p> <p>24 Q. Who were your attorneys?</p> <p>25 A. Harris Beach was involved in that and</p>

<p style="text-align: right;">Page 42</p> <p>1 W. Eber</p> <p>2 also I consulted with our tax advisor Sumner</p> <p>3 Persol.</p> <p>4 Can I take a bathroom break?</p> <p>5 MR. BROOK: Sure. You can do that but</p> <p>6 let me ask one last very quick question to</p> <p>7 finish this topic up.</p> <p>8 Q. Was Lester Eber involved in the</p> <p>9 Polebridge Bowman deal?</p> <p>10 A. He knew about it.</p> <p>11 Q. But he was not the person negotiating</p> <p>12 it, you were; is that right?</p> <p>13 A. It was the attorneys Harris Beach was</p> <p>14 involved in it.</p> <p>15 MR. RAMSEY: He is asking about</p> <p>16 Lester.</p> <p>17 Was Lester involved in it?</p> <p>18 THE WITNESS: He knew about it. I</p> <p>19 don't remember how much involved he was</p> <p>20 involved in it.</p> <p>21 Q. So let's take a break.</p> <p>22 THE VIDEOGRAPHER: This marks the end</p> <p>23 of media unit number one in the videotaped</p> <p>24 deposition of Wendy Eber. We are going off</p> <p>25 the record. The time is 10:42.</p>	<p style="text-align: right;">Page 44</p> <p>1 W. Eber</p> <p>2 issues.</p> <p>3 Q. So you are saying Glenn Sturm</p> <p>4 requested an interest in the company?</p> <p>5 MR. RAMSEY: Form.</p> <p>6 A. No. I am saying that he -- we wanted</p> <p>7 him to help us.</p> <p>8 Q. So how did him helping you relate to</p> <p>9 him acquiring an interest in Eber Connecticut?</p> <p>10 A. It is a part -- we paid him part and</p> <p>11 this is the way he got paid in a lot of companies</p> <p>12 that he worked with. So this was kind of the way</p> <p>13 he did business.</p> <p>14 Q. So this was a part of his compensation</p> <p>15 for services, is that what you are saying?</p> <p>16 A. Partly to help. We -- yes.</p> <p>17 Q. Was there another purpose to the</p> <p>18 transaction?</p> <p>19 MR. RAMSEY: Form.</p> <p>20 A. Not that I remember. There could have</p> <p>21 been other purposes, but we wanted him to help us.</p> <p>22 Q. Who first brought up the idea of Glenn</p> <p>23 Sturm acquiring an interest in Eber Connecticut?</p> <p>24 A. I don't remember.</p> <p>25 Q. What was the first proposal that you</p>
<p style="text-align: right;">Page 43</p> <p>1 W. Eber</p> <p>2 (Recess taken.)</p> <p>3 THE VIDEOGRAPHER: This marks the</p> <p>4 beginning of media unit number two in the</p> <p>5 videotaped deposition of Wendy Eber. We are</p> <p>6 going on the record. The time is 10:56.</p> <p>7 BY MR. BROOK:</p> <p>8 Q. Are you good to continue at this</p> <p>9 point?</p> <p>10 A. Yes.</p> <p>11 Q. When we broke we were talking a little</p> <p>12 bit about who was involved in the negotiations</p> <p>13 relating to the Polebridge Bowman acquisition of</p> <p>14 six percent interest in Eber Connecticut.</p> <p>15 How did those -- how did that deal</p> <p>16 first get brought to your attention?</p> <p>17 A. The companies were losing lots of</p> <p>18 money. It was a very disastrous situation and we</p> <p>19 wanted Glenn to help us.</p> <p>20 Q. So how did Glenn helping the companies</p> <p>21 relate to his acquisition of six percent interest?</p> <p>22 A. That was the type of lawyer that he</p> <p>23 is. That was kind of common place for what he did</p> <p>24 as a living. I mean he was a corporate lawyer and</p> <p>25 helped small businesses grow and had a lot of</p>	<p style="text-align: right;">Page 45</p> <p>1 W. Eber</p> <p>2 recall seeing for Glenn Sturm to acquire an</p> <p>3 interest in Eber Connecticut?</p> <p>4 A. I don't remember. I don't remember.</p> <p>5 Q. At the time that the Polebridge Bowman</p> <p>6 six percent deal was first proposed, was Glenn</p> <p>7 Sturm already representing Eber Metro or its</p> <p>8 affiliates as a lawyer?</p> <p>9 A. He may have been. He may have been.</p> <p>10 He was involved in some legal work for us.</p> <p>11 Q. What was that legal work?</p> <p>12 MR. RAMSEY: Not discussions you had</p> <p>13 with him. Just the nature of the work he</p> <p>14 was doing for you.</p> <p>15 A. We had a legal case against us with a</p> <p>16 company called Wolf Concepts.</p> <p>17 Q. So you are saying Glenn Sturm was</p> <p>18 involved in that?</p> <p>19 A. He was advising us on some of that,</p> <p>20 yes. You know the dates are -- I don't know all</p> <p>21 the specific dates he was involved in that.</p> <p>22 MR. RAMSEY: He was involved in some</p> <p>23 of it?</p> <p>24 THE WITNESS: Yes. Some of it. We</p> <p>25 had other lawyers too working on that Wolf</p>

<p style="text-align: right;">Page 46</p> <p>1 W. Eber</p> <p>2 Concepts. He was involved in the</p> <p>3 negotiation of the settlement. You know,</p> <p>4 these legal cases can go on a long time. So</p> <p>5 he was involved in parts of it.</p> <p>6 Q. What was the Wolf Concepts matter</p> <p>7 about?</p> <p>8 A. Sorry?</p> <p>9 Q. What was the Wolf Concepts legal case</p> <p>10 about in a nutshell?</p> <p>11 A. That was -- my understanding was that</p> <p>12 was a breach of contract dispute with a vodka</p> <p>13 supplier and the Eber companies.</p> <p>14 Q. So Wolf Concepts was a vodka supplier;</p> <p>15 is that right?</p> <p>16 A. Petrossian Vodka.</p> <p>17 Q. And who was suing who? Was Wolf</p> <p>18 Concepts suing Eber brothers or the other --</p> <p>19 A. Yes. They were suing Eber Brothers</p> <p>20 and maybe other companies within the -- I am not</p> <p>21 sure. This is before my time. So as I believe</p> <p>22 the lawsuit started before I was CFO and secretary</p> <p>23 of Metro.</p> <p>24 Q. At the time you were CFO and secretary</p> <p>25 of Eber Metro, what was your position with Eber</p>	<p style="text-align: right;">Page 48</p> <p>1 W. Eber</p> <p>2 dispute management and secretary. I am also</p> <p>3 on the board. The board, I believe.</p> <p>4 Q. Are there any other officers or</p> <p>5 directors of Eber Brothers Wine and Liquor Corp.</p> <p>6 at this time?</p> <p>7 A. Lester.</p> <p>8 Q. What is his position?</p> <p>9 A. He is a director.</p> <p>10 Q. And was there a time when Lester was</p> <p>11 not a director of Eber Brothers Wine and Liquor</p> <p>12 Corp.?</p> <p>13 A. Yes.</p> <p>14 Q. When was that?</p> <p>15 A. Somewhere like February of 2012 he</p> <p>16 resigned.</p> <p>17 Q. As both an officer and director?</p> <p>18 A. I don't remember specifics. He did</p> <p>19 resign as -- he resigned as president. I don't</p> <p>20 remember all the specifics.</p> <p>21 Q. Did anyone replace him as president of</p> <p>22 Eber Brothers Wine and Liquor Corp.?</p> <p>23 A. I did.</p> <p>24 Q. How long were you the president of</p> <p>25 Eber Brothers Wine and Liquor Corp. for?</p>
<p style="text-align: right;">Page 47</p> <p>1 W. Eber</p> <p>2 Brothers Wine and Liquor Corporation?</p> <p>3 A. When?</p> <p>4 Q. At the time.</p> <p>5 MR. RAMSEY: Form.</p> <p>6 Q. I guess when you were first made</p> <p>7 secretary and CFO.</p> <p>8 A. Of?</p> <p>9 Q. Of Eber Metro.</p> <p>10 What was your position with Eber</p> <p>11 Brothers Wine and Liquor Corp.?</p> <p>12 A. I was CFO and secretary of Eber</p> <p>13 Brothers Wine and Liquor Corp. too.</p> <p>14 Q. And at that same time, what was your</p> <p>15 position or your positions with Eber Connecticut?</p> <p>16 A. Eber Connecticut I was treasurer and</p> <p>17 secretary, I believe.</p> <p>18 Q. What is your current position with</p> <p>19 Eber Brothers Wine and Liquor Corp.?</p> <p>20 A. My current position with Eber Brothers</p> <p>21 Wine and Liquor Corp. assistant secretary of</p> <p>22 dispute management and secretary.</p> <p>23 MR. CALIHAN: I'm sorry.</p> <p>24 Can you say that again?</p> <p>25 THE WITNESS: Assistant secretary of</p>	<p style="text-align: right;">Page 49</p> <p>1 W. Eber</p> <p>2 A. I don't remember all the specific</p> <p>3 dates. There were some insurance issues where we</p> <p>4 resigned some positions, but I don't remember all</p> <p>5 the dates going back and forth.</p> <p>6 Q. Are you saying you resigned as</p> <p>7 president of Eber Brothers Wine and Liquor Corp.</p> <p>8 at some point out of insurance concerns?</p> <p>9 MR. RAMSEY: Form.</p> <p>10 A. Yes, I believe so. And I was the</p> <p>11 assistant secretary of dispute management.</p> <p>12 Q. What does that title mean?</p> <p>13 A. As you know there is a lot -- there</p> <p>14 were a lot of legal matters that needed to be</p> <p>15 worked on. So I was in that capacity. Had the</p> <p>16 ability to work on some legal matters.</p> <p>17 Q. Approximately, when did Lester Eber</p> <p>18 most recently get elected as a director of Eber</p> <p>19 Brothers Wine and Liquor Corp.?</p> <p>20 A. Recently, recently. We had a board</p> <p>21 meeting.</p> <p>22 Q. When was that approximately?</p> <p>23 A. Within recently I would say the last</p> <p>24 couple of months or so. Three months. I don't</p> <p>25 remember exactly.</p>

<p style="text-align: right;">Page 50</p> <p>1 W. Eber</p> <p>2 Q. Had he been a director immediately</p> <p>3 before that election?</p> <p>4 A. You know, I don't remember.</p> <p>5 Q. Going back to the Polebridge Bowman</p> <p>6 transaction, was any part of that transaction</p> <p>7 actually negotiated with Glenn Sturm?</p> <p>8 MR. RAMSEY: Form.</p> <p>9 Q. Meaning there was back and forth?</p> <p>10 A. Yes.</p> <p>11 Q. What was it?</p> <p>12 A. What do you mean by back and forth?</p> <p>13 Q. Did he make any proposals that you did</p> <p>14 not agree to?</p> <p>15 A. I think originally he wanted more</p> <p>16 stock and we agreed on less. You know, I remember</p> <p>17 talking to our accountant. I believe I spoke with</p> <p>18 Mike Gumaer. I don't remember. I don't remember</p> <p>19 all the specifics. I spoke with Sumner our tax</p> <p>20 accountant.</p> <p>21 Q. And how was the pricing established</p> <p>22 for the six percent that he acquired?</p> <p>23 A. The company was losing -- Connecticut</p> <p>24 was losing vast amounts of money. It was a</p> <p>25 disaster. We were losing millions of dollars and</p>	<p style="text-align: right;">Page 52</p> <p>1 W. Eber</p> <p>2 Q. So do you recall whether the 350,000</p> <p>3 dollar purchase price was something that was</p> <p>4 negotiated?</p> <p>5 A. We did negotiate it. I mean we did</p> <p>6 talk about it, yes.</p> <p>7 Q. So now that your memory has been</p> <p>8 refreshed, what do you recall about those</p> <p>9 negotiations?</p> <p>10 A. I don't remember. I just -- I told</p> <p>11 you what I remember.</p> <p>12 Q. Who put out the first offer in terms</p> <p>13 of a price?</p> <p>14 A. I don't remember. I don't remember.</p> <p>15 Q. Was any valuation worked on on the</p> <p>16 company by any accountants?</p> <p>17 A. I spoke with our accountant Sumner</p> <p>18 Persol.</p> <p>19 Q. You said he was your tax accountant;</p> <p>20 is that right?</p> <p>21 A. Yes.</p> <p>22 Q. And you are saying he also -- did he</p> <p>23 perform a valuation analysis on the company?</p> <p>24 A. What do you mean by valuation?</p> <p>25 Q. Have you ever heard of accountants or</p>
<p style="text-align: right;">Page 51</p> <p>1 W. Eber</p> <p>2 -- sorry.</p> <p>3 Repeat your question.</p> <p>4 MR. BROOK: Would you read my question</p> <p>5 back please?</p> <p>6 (Record read.)</p> <p>7 A. So you know we were in rough shape.</p> <p>8 It was a disaster and I had kind of remember</p> <p>9 looking at the financials, speaking with Sumner.</p> <p>10 That's about what I remember.</p> <p>11 Q. So how was the pricing established?</p> <p>12 MR. RAMSEY: Form.</p> <p>13 Do you mean the price or the</p> <p>14 structure?</p> <p>15 MR. BROOK: The price.</p> <p>16 A. I don't remember the specifics. I</p> <p>17 mean I know we were losing -- we looked at the</p> <p>18 financial statements. I talked to Sumner our tax</p> <p>19 accountant. It was severe financial distress for</p> <p>20 us. Connecticut had lost --</p> <p>21 MR. RAMSEY: I think he is asking how</p> <p>22 did you arrive at the 350.</p> <p>23 A. Yeah, I don't remember all the</p> <p>24 specifics. I just remember it was severe</p> <p>25 financial distress.</p>	<p style="text-align: right;">Page 53</p> <p>1 W. Eber</p> <p>2 investment bankers doing a valuation of a company</p> <p>3 before?</p> <p>4 A. Yes. I mean I --</p> <p>5 Q. Has that ever been done on Eber</p> <p>6 Connecticut by anyone?</p> <p>7 MR. CALIHAN: Objection to form.</p> <p>8 A. We recently had one done, you know.</p> <p>9 We recently.</p> <p>10 Q. Was that done at all in connection</p> <p>11 with the Polebridge Bowman transaction?</p> <p>12 A. No.</p> <p>13 Q. Why not?</p> <p>14 MR. CALIHAN: Objection to form.</p> <p>15 MR. RAMSEY: Form.</p> <p>16 A. I don't know. We didn't do it. This</p> <p>17 is a small family business, you know. It was</p> <p>18 losing a lot of money at the time. You know, you</p> <p>19 had the recession compounded you know, the company</p> <p>20 losing money.</p> <p>21 Q. So is it fair to say that when you</p> <p>22 were negotiating the 350,000 dollar purchase price</p> <p>23 with Glenn Sturm you didn't feel that Eber Metro</p> <p>24 had a lot of leverage to try to bargain for a</p> <p>25 higher price?</p>



<p style="text-align: right;">Page 54</p> <p>1 W. Eber</p> <p>2 MR. RAMSEY: Form.</p> <p>3 A. We wanted him to really come help us.</p> <p>4 This is how he did business. We were in, like I</p> <p>5 said it was the recession. We were losing a lot</p> <p>6 of money and we really wanted him to help us</p> <p>7 through what was a very challenging financial</p> <p>8 situation and legal. A lot of legal things going</p> <p>9 on as well.</p> <p>10 Q. Did you or Eber Metro look into</p> <p>11 possibly selling six percent of the company to</p> <p>12 anyone else instead of Glenn Sturm?</p> <p>13 A. I don't really remember.</p> <p>14 Q. Were any outside parties given the</p> <p>15 opportunity to bid on the six percent that was</p> <p>16 sold to Glenn Sturm?</p> <p>17 MR. RAMSEY: Form.</p> <p>18 A. I don't remember. I don't</p> <p>19 specifically remember.</p> <p>20 Q. By taking six percent of Eber</p> <p>21 Connecticut, was it your understanding that Glenn</p> <p>22 Sturm would have a role in the management or</p> <p>23 operation of Eber Connecticut?</p> <p>24 A. What do you mean?</p> <p>25 Q. By taking an interest in the company,</p>	<p style="text-align: right;">Page 56</p> <p>1 W. Eber</p> <p>2 company. He came and addressed the company. He</p> <p>3 was helping us with developing like the direction</p> <p>4 to go into craft spirits and defining what it is</p> <p>5 that we do well. You know smaller craft spirits</p> <p>6 he was involved in that and focusing on the Slocum</p> <p>7 imports which were the Slocum and Sons. Eber</p> <p>8 Connecticut owned part of it was the import wine</p> <p>9 company and trying to focus on some of those wines</p> <p>10 within that import company to grow the company.</p> <p>11 Q. What was the import wine company's</p> <p>12 name?</p> <p>13 A. It was part of Eber Connecticut. I</p> <p>14 mean it just it didn't have a separate. It was</p> <p>15 Slocum Imports. It's more for the label with the</p> <p>16 TTB, but we had a big initiative to kind of grow</p> <p>17 those brands and German and Austrian portfolio.</p> <p>18 Q. Can you name a couple of the brands</p> <p>19 that you are referring to?</p> <p>20 A. Sure. Jos Reinisch Rotgipfler.</p> <p>21 Q. Probably starts with a J; right?</p> <p>22 A. Yeah, it does. It was not a large</p> <p>23 seller.</p> <p>24 We had an Auxerrois from Luxembourg.</p> <p>25 We had --</p>
<p style="text-align: right;">Page 55</p> <p>1 W. Eber</p> <p>2 was it your understanding that that would help</p> <p>3 Glenn Sturm to provide services in connection with</p> <p>4 the management or operation of Eber Connecticut?</p> <p>5 A. Well, what do you mean by management</p> <p>6 or operation?</p> <p>7 Q. So what exactly was it that you wanted</p> <p>8 Glenn Sturm to do for Eber Metro or its</p> <p>9 affiliates?</p> <p>10 A. As I said, we were in extreme</p> <p>11 financial distress in that company from you know,</p> <p>12 the recession. Like strategically we needed some</p> <p>13 direction and legal advice on many different</p> <p>14 fronts. So he wasn't necessarily going to be</p> <p>15 involved in the day-to-day management, but he did</p> <p>16 offer a lot of strategic, like setting directions</p> <p>17 on different strategic initiatives.</p> <p>18 Q. What were the strategic initiatives</p> <p>19 that he provided directions on?</p> <p>20 A. Well, he did come in and you know,</p> <p>21 address -- a lot of issues I think were leadership</p> <p>22 driven, you know. These are extremely difficult</p> <p>23 times Brian; right. There is a lot of stress.</p> <p>24 They are very, very stressful. So he provided I</p> <p>25 think some leadership for Lester, for me, for the</p>	<p style="text-align: right;">Page 57</p> <p>1 W. Eber</p> <p>2 Q. Why don't you focus on the ones that</p> <p>3 actually were good sellers.</p> <p>4 A. Okay. You know we had some Gruner</p> <p>5 Veltliner portfolios. Let me just think here.</p> <p>6 Groiss. One of the producer is Eder, E-D-E-R,</p> <p>7 Diel, D-I-E-L.</p> <p>8 Some very esoteric -- it's a lot of</p> <p>9 esoteric stuff too.</p> <p>10 Q. And this was a successful part of your</p> <p>11 business?</p> <p>12 A. It has not been that successful.</p> <p>13 Q. This is something that Glenn Sturm</p> <p>14 encouraged you to go into; is that right?</p> <p>15 A. We were in it. We were trying to grow</p> <p>16 it. The craft spirits has been much more</p> <p>17 successful for us.</p> <p>18 Q. And what are some of the most</p> <p>19 successful craft spirit brands that you are</p> <p>20 referring to?</p> <p>21 A. The most successful ones that we have</p> <p>22 I would say High West, Four Roses.</p> <p>23 Q. Does Eber Connecticut still own the</p> <p>24 Slocum Imports Wine Company, Import Wine Company?</p> <p>25 A. It is not an import wine company</p>

<p style="text-align: right;">Page 58</p> <p>1 W. Eber</p> <p>2 separate from Connecticut. It is part of the</p> <p>3 Connecticut business. So it's -- you know, so we</p> <p>4 do still import some wines. It just hasn't been</p> <p>5 that successful. The German Austrian wines</p> <p>6 haven't been that successful in terms of creating</p> <p>7 a brand and then selling it. We don't have the</p> <p>8 infrastructure to do it as much, but some items</p> <p>9 like the Groiss Gruner Veltliner has been</p> <p>10 successful.</p> <p>11 Q. In order to import wines from abroad,</p> <p>12 is a license required?</p> <p>13 A. For us to import it I believe so, yes.</p> <p>14 Q. So Eber Connecticut has an import</p> <p>15 license?</p> <p>16 A. I believe so, yes. We do have. I</p> <p>17 don't know all the specifics.</p> <p>18 Q. Does the company Slocum and Sons of</p> <p>19 Maine Inc. have any involvement in importing wines</p> <p>20 that are sold by Eber Connecticut?</p> <p>21 A. I don't know. It may. I don't know</p> <p>22 specifically.</p> <p>23 Q. Do you currently have a position with</p> <p>24 Slocum and Sons of Maine?</p> <p>25 A. I just pulled that documentation for</p>	<p style="text-align: right;">Page 60</p> <p>1 W. Eber</p> <p>2 Interest in?</p> <p>3 MR. BROOK: Slocum of Maine.</p> <p>4 A. No.</p> <p>5 Q. Is it correct that Lester Eber</p> <p>6 acquired the other 50 percent at about the same</p> <p>7 time that you did?</p> <p>8 A. Correct.</p> <p>9 Q. Did he also pay \$10 or was the \$10 for</p> <p>10 both of you?</p> <p>11 A. I don't know. I don't.</p> <p>12 Q. Probably doesn't make a difference</p> <p>13 whether it was ten or \$20?</p> <p>14 A. You do have the document though.</p> <p>15 MR. RAMSEY: Just your recollection.</p> <p>16 Q. And I get a little ahead of myself. I</p> <p>17 am going to ask more questions on that when I get</p> <p>18 to Eber Connecticut, but for now I want to stay</p> <p>19 focused on getting through what we can on Eber</p> <p>20 Metro.</p> <p>21 Now going back to again the Polebridge</p> <p>22 Bowman deal, you said it was extremely difficult</p> <p>23 times. I know dates are hard, but to the best of</p> <p>24 your ability, what approximate time range are you</p> <p>25 talking about was the extremely difficult times</p>
<p style="text-align: right;">Page 59</p> <p>1 W. Eber</p> <p>2 you. So I am secretary and either CFO or</p> <p>3 treasurer.</p> <p>4 Q. And how long have you had those</p> <p>5 positions for?</p> <p>6 A. Since when I acquired it which 2012</p> <p>7 maybe, 2013. 2012, 2013.</p> <p>8 Q. Who did you acquire it from?</p> <p>9 A. I acquired 50 percent from I believe</p> <p>10 it was Tom Slocum and Jeb Slocum.</p> <p>11 Q. What did you give them for exchange of</p> <p>12 the 50 percent?</p> <p>13 A. I believe it was \$10.</p> <p>14 Q. What do you mean by \$10? Is that</p> <p>15 something that had been specified earlier?</p> <p>16 A. I don't have the document in front of</p> <p>17 me. The document was provided.</p> <p>18 MR. RAMSEY: What's your recollection</p> <p>19 of what you gave for the 50 percent?</p> <p>20 THE WITNESS: I believe it was \$10 but</p> <p>21 I don't know. I don't remember</p> <p>22 specifically.</p> <p>23 Q. And prior to 2012, did you have an</p> <p>24 interest in Slocum of Maine?</p> <p>25 MR. CALIHAN: I am sorry.</p>	<p style="text-align: right;">Page 61</p> <p>1 W. Eber</p> <p>2 when you were negotiating with Glenn Sturm?</p> <p>3 A. When Southern came into the market and</p> <p>4 put us out of business it was a crisis and that</p> <p>5 was kind of the beginning of the crisis. Then</p> <p>6 there was the recession, you know. One thing --</p> <p>7 then we were dualled on Yellow Tail wines. There</p> <p>8 were many things going on. There were lawsuits.</p> <p>9 Many lawsuits going on and legal issues, bank</p> <p>10 problems, Wells Fargo calling a loan. It was...</p> <p>11 Q. At what point approximately did the</p> <p>12 extremely difficult times end?</p> <p>13 MR. CALIHAN: Objection to form.</p> <p>14 MR. RAMSEY: Form. If they did.</p> <p>15 A. I don't know. It's you know, been a</p> <p>16 lot of struggles over many, many years. Many</p> <p>17 years of struggles.</p> <p>18 Q. Going back to Exhibit 11 in front of</p> <p>19 you, that's the organizational chart.</p> <p>20 A. Yes.</p> <p>21 Q. We already discussed how the next</p> <p>22 change on this occurred was the six percent sale</p> <p>23 to Polebridge Bowman.</p> <p>24 After that, what was the next change</p> <p>25 that occurred with respect to this chart?</p>

<p style="text-align: right;">Page 62</p> <p>1 W. Eber</p> <p>2 A. Alexbay.</p> <p>3 Q. So you are referring to the Alexbay</p> <p>4 acquisition of Eber Brothers Wine and Liquor</p> <p>5 Metro?</p> <p>6 A. The article nine sale.</p> <p>7 Q. What do you mean by article nine sale?</p> <p>8 A. Well, the foreclosure of Alexbay</p> <p>9 taking, you know loaning in the money and then</p> <p>10 taking the stock of Eber Metro. The foreclosure</p> <p>11 action. I don't know the legal term but Lester</p> <p>12 loaned in money.</p> <p>13 Q. So at some point Lester sought to</p> <p>14 foreclose on that loan or those loans?</p> <p>15 MR. RAMSEY: Form.</p> <p>16 Q. Is that right?</p> <p>17 A. I don't know what the legal term is.</p> <p>18 I don't want to misuse a term. Lester took</p> <p>19 control over Metro.</p> <p>20 Q. And did Lester taking control of Eber</p> <p>21 Metro have any impact on how difficult the</p> <p>22 economic times were for Eber Connecticut?</p> <p>23 A. Can you rephrase that question?</p> <p>24 Q. Did Alexbay and Lester taking control</p> <p>25 of Eber Metro have any impact on the difficult</p>	<p style="text-align: right;">Page 64</p> <p>1 W. Eber</p> <p>2 Q. Is there a particular word that I am</p> <p>3 using that's hard to understand?</p> <p>4 MR. RAMSEY: Form. She said she</p> <p>5 doesn't understand the question.</p> <p>6 MR. BROOK: I am trying to help her.</p> <p>7 A. I don't really know.</p> <p>8 What did you say? Say it again.</p> <p>9 Q. Was there any benefit to Eber Metro or</p> <p>10 Eber Connecticut financially as a result of Lester</p> <p>11 Eber taking control of Eber Metro?</p> <p>12 A. He did loan in a lot of money to</p> <p>13 basically save the money, save the companies.</p> <p>14 MR. RAMSEY: He is asking about</p> <p>15 Alexbay, not the loans before. He is asking</p> <p>16 when Lester gained control of Eber Metro.</p> <p>17 That's what he is talking about now.</p> <p>18 Q. Talking about actually --</p> <p>19 A. Then he lent in more money too. So</p> <p>20 that was a benefit. He was lending in more money</p> <p>21 in too after that as well. So that was definitely</p> <p>22 a benefit, you know, that had that money not been</p> <p>23 lent in the company would not be around. It would</p> <p>24 have just closed.</p> <p>25 Q. Was it your understanding that Lester</p>
<p style="text-align: right;">Page 63</p> <p>1 W. Eber</p> <p>2 times that you were facing as a company?</p> <p>3 A. What company?</p> <p>4 Q. Either Eber Metro or its affiliates,</p> <p>5 Eber Connecticut.</p> <p>6 A. I don't specifically remember. I mean</p> <p>7 it's -- there were a lot of issues going on and I</p> <p>8 am not a lawyer, so.</p> <p>9 Q. I am not asking legally. I am asking</p> <p>10 in terms of the company.</p> <p>11 A. Him loaning in money helped. I mean</p> <p>12 yeah, it definitely. If we hadn't had the money</p> <p>13 that Lester loaned in the companies would have</p> <p>14 collapsed, yes.</p> <p>15 Q. That wasn't my question.</p> <p>16 My question was about him taking</p> <p>17 control of the company was something that had any</p> <p>18 impact on the difficult times that the company and</p> <p>19 its affiliates were facing.</p> <p>20 MR. RAMSEY: Do you understand the</p> <p>21 question?</p> <p>22 THE WITNESS: Not really.</p> <p>23 MR. RAMSEY: Then tell him that and he</p> <p>24 will repeat.</p> <p>25 A. I don't really.</p>	<p style="text-align: right;">Page 65</p> <p>1 W. Eber</p> <p>2 was not willing to loan any more money to the</p> <p>3 company unless he had complete control over it?</p> <p>4 MR. RAMSEY: Form.</p> <p>5 A. No. I mean I think in the original</p> <p>6 loans -- I don't know. I don't know. I mean why</p> <p>7 don't you ask Lester. I don't -- I mean I don't</p> <p>8 know. I mean he loaned money in after, after this</p> <p>9 chart changed and before and had he not done that</p> <p>10 these companies would not have existed given the</p> <p>11 financial legal disaster faced by these companies.</p> <p>12 Q. What was your understanding as to why</p> <p>13 Lester was loaning so much money to a business</p> <p>14 that was not performing well?</p> <p>15 A. Why he was doing it?</p> <p>16 Q. Yes.</p> <p>17 A. I think it was emotional. Some</p> <p>18 emotional trying to keep the company alive.</p> <p>19 Trying to keep, save jobs. The employees. You</p> <p>20 got to ask him.</p> <p>21 Q. Did you ever ask him Lester, why are</p> <p>22 you loaning so much money to this business?</p> <p>23 A. Did I ever ask him why? No. I didn't</p> <p>24 ask him. I knew it was a struggle for him</p> <p>25 emotionally, financially. I will say when I put</p>

<p style="text-align: right;">Page 66</p> <p>1 W. Eber</p> <p>2 the document together for discovery and you see</p> <p>3 how much it is, it is after putting it on a</p> <p>4 document you are like oh my God, this is a lot of</p> <p>5 money, you know.</p> <p>6 MR. RAMSEY: All right. You answered</p> <p>7 the question.</p> <p>8 A. So --</p> <p>9 MR. RAMSEY: You answered the</p> <p>10 question.</p> <p>11 Q. The other side of the coin, you never</p> <p>12 told him Lester, you should stop putting money</p> <p>13 into the company, it is a sinking ship or</p> <p>14 something along those lines, did you?</p> <p>15 MR. RAMSEY: Form.</p> <p>16 A. You know, I don't specific -- I don't</p> <p>17 specifically remember. It is easy to play Monday</p> <p>18 morning quarterback.</p> <p>19 MR. RAMSEY: All he is asking is did</p> <p>20 you have that conversation about investing,</p> <p>21 loaning money.</p> <p>22 A. I don't remember saying that. I</p> <p>23 remember just, you know, that it was financially a</p> <p>24 lot of money coming from him and very hard on him</p> <p>25 financially. Very, very hard. And these are</p>	<p style="text-align: right;">Page 68</p> <p>1 W. Eber</p> <p>2 Q. Is that guarantee because that's</p> <p>3 reflected at the footnote on the bottom; is that</p> <p>4 right?</p> <p>5 A. Yes.</p> <p>6 Q. But that's not included in the total</p> <p>7 that's appeared on this document?</p> <p>8 A. No.</p> <p>9 Q. And you prepared this document?</p> <p>10 A. Yes.</p> <p>11 Q. When did you prepare it?</p> <p>12 A. I believe for this litigation.</p> <p>13 Q. Where did you get the information that</p> <p>14 you put into this document?</p> <p>15 A. I don't remember the places. Some of</p> <p>16 the source documents. Maybe the actual checks. I</p> <p>17 don't remember everywhere I got numbers from.</p> <p>18 Q. Did anyone else either at the Eber</p> <p>19 companies or at a law firm, to your knowledge,</p> <p>20 ever check the accuracy of the information that</p> <p>21 you put into the document?</p> <p>22 MR. RAMSEY: Form.</p> <p>23 A. Sorry. Say that again.</p> <p>24 Q. Did anyone else, no matter who they</p> <p>25 are associated with, check the accuracy of the</p>
<p style="text-align: right;">Page 67</p> <p>1 W. Eber</p> <p>2 emotional decisions that, you know, that I don't</p> <p>3 specifically remember having that conversation</p> <p>4 with him.</p> <p>5 MR. BROOK: Let's mark this next one</p> <p>6 which is a document called Summary of Lester</p> <p>7 Eber's Payments For Liabilities of Eber</p> <p>8 Brothers W and L Corp. Bates number EB</p> <p>9 00020333 as Plaintiffs' Exhibit 12.</p> <p>10 (Plaintiffs' Exhibit 12, a document</p> <p>11 called Summary of Lester Eber's Payments For</p> <p>12 Liabilities of Eber Brothers W and L Corp.</p> <p>13 Bates number EB 00020333 as Plaintiffs'</p> <p>14 Exhibit 12, marked for identification, as of</p> <p>15 this date.)</p> <p>16 Q. Do you have Exhibit 12 in front of</p> <p>17 you?</p> <p>18 A. Yes.</p> <p>19 Q. Do you recognize this document?</p> <p>20 A. Yes.</p> <p>21 Q. What is it?</p> <p>22 A. These are moneys that Lester loaned</p> <p>23 and paid for various liabilities and also he</p> <p>24 personally guaranteed a bank loan and secured it</p> <p>25 with cash and pledges of assets.</p>	<p style="text-align: right;">Page 69</p> <p>1 W. Eber</p> <p>2 information that you put into this document?</p> <p>3 A. I don't remember. I don't know if my</p> <p>4 lawyers did or not.</p> <p>5 Q. But to your knowledge, no one else</p> <p>6 checked that; is that correct?</p> <p>7 MR. RAMSEY: Form. That's what she</p> <p>8 said.</p> <p>9 Go ahead.</p> <p>10 THE WITNESS: Am I supposed to --</p> <p>11 MR. RAMSEY: Go ahead and answer.</p> <p>12 Q. You are not aware of anyone else who</p> <p>13 checked this; is that right?</p> <p>14 A. No.</p> <p>15 Q. So no, you are not aware?</p> <p>16 A. No, I am not aware. Sorry.</p> <p>17 Q. And I notice that the first line says</p> <p>18 EWLC loan and then the next few lines say EBWLC</p> <p>19 loan.</p> <p>20 Do you see that under description of</p> <p>21 funds?</p> <p>22 A. Yes.</p> <p>23 Q. Is there a difference between EWLC</p> <p>24 loan and EBWLC loan? Is there a difference</p> <p>25 intended I should say?</p>

18 (Pages 66 - 69)

<p style="text-align: right;">Page 70</p> <p>1 W. Eber</p> <p>2 A. I think the first part where loans</p> <p>3 that were made into Eber Brothers Wine and Liquor</p> <p>4 Corp. I don't know all the legalese but there</p> <p>5 were --</p> <p>6 MR. RAMSEY: The first line she is</p> <p>7 referring to, correct me if I am wrong.</p> <p>8 There is no B in the first line.</p> <p>9 A. Oh, you are saying this one EWLC loan</p> <p>10 versus EB.</p> <p>11 Q. Yes.</p> <p>12 A. Oh, no. I think that's a typo.</p> <p>13 Q. So --</p> <p>14 A. Oh, I thought you were talking about</p> <p>15 that.</p> <p>16 Q. I am getting to that next.</p> <p>17 A. Sorry. No, I think that's a typo.</p> <p>18 Q. So then below the lines that say, we</p> <p>19 will just say EBWLC loan for all of them.</p> <p>20 It says EBWL Metro Inc. loan on a</p> <p>21 number of lines; right?</p> <p>22 A. Right.</p> <p>23 Q. So how did you determine for creating</p> <p>24 this document whether to describe it as EBWLC or</p> <p>25 EBWL Metro?</p>	<p style="text-align: right;">Page 72</p> <p>1 W. Eber</p> <p>2 Q. Plaintiffs' Exhibit 13 is a document</p> <p>3 entitled Line of Credit Note bearing Bates numbers</p> <p>4 EB 00017871 through 73, as well as Bates numbers</p> <p>5 KSH 00001 through 3.</p> <p>6 Do you recognize this document?</p> <p>7 A. Vaguely.</p> <p>8 Q. Is that your -- please turn to page 3.</p> <p>9 Is that your signature?</p> <p>10 A. Yeah.</p> <p>11 Q. Does this refresh your recollection</p> <p>12 that there was a line of credit note in the amount</p> <p>13 of 1,500,000 dollars between Eber Metro and Lester</p> <p>14 Eber?</p> <p>15 A. Yes.</p> <p>16 Q. And who negotiated the terms of this</p> <p>17 note on behalf of Eber Metro?</p> <p>18 A. I think Harris Beach was the lawyer.</p> <p>19 So I don't specifically remember. You know, this</p> <p>20 was the recession. We were -- we needed money.</p> <p>21 No banks would give us money and this was -- we</p> <p>22 were trying to get money and I don't remember the</p> <p>23 details who negotiated this.</p> <p>24 Q. Who determined the amount?</p> <p>25 A. I don't remember.</p>
<p style="text-align: right;">Page 71</p> <p>1 W. Eber</p> <p>2 A. I don't remember.</p> <p>3 Q. Did you base it on the dates when Eber</p> <p>4 Metro assumed the loan obligations of Eber</p> <p>5 Brothers Wine and Liquor Corp.?</p> <p>6 A. I don't remember Brian. I just don't</p> <p>7 remember.</p> <p>8 Q. Do you recall that there was a 1.5</p> <p>9 million dollar line of credit note between Eber</p> <p>10 Metro and Lester Eber?</p> <p>11 A. I don't remember all the details of</p> <p>12 the notes.</p> <p>13 Q. Who -- was there anyone on behalf of</p> <p>14 Eber Metro that was involved in negotiating the</p> <p>15 line of credit note between Lester Eber and Eber</p> <p>16 Metro?</p> <p>17 A. What year was that?</p> <p>18 Q. Let's get it in writing.</p> <p>19 MR. BROOK: Please mark this as</p> <p>20 Plaintiffs' Exhibit 13.</p> <p>21 (Plaintiffs' Exhibit 13, a document</p> <p>22 entitled Line of Credit Note bearing Bates</p> <p>23 numbers EB 00017871 through 73, as well as</p> <p>24 Bates numbers KSH 00001 through 3, marked</p> <p>25 for identification, as of this date.)</p>	<p style="text-align: right;">Page 73</p> <p>1 W. Eber</p> <p>2 Q. Take a look at page 1 paragraph 2 sets</p> <p>3 out an interest rate of a non-default interest</p> <p>4 rate of 12.5 percent per year.</p> <p>5 Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. How was that interest rate determined?</p> <p>8 A. Can I just take a minute to read this?</p> <p>9 MR. RAMSEY: Sure. Take as much time</p> <p>10 as you need.</p> <p>11 Off the record.</p> <p>12 (Discussion off the record.)</p> <p>13 BY MR. BROOK:</p> <p>14 A. Do you want me to read the whole</p> <p>15 document or just the interest rate?</p> <p>16 Q. No. I was just asking about the</p> <p>17 interest rate.</p> <p>18 How was that determined?</p> <p>19 A. I don't remember.</p> <p>20 Q. Do you recall there being any</p> <p>21 negotiation of that amount?</p> <p>22 A. I don't remember. I just don't</p> <p>23 remember. You know, it's ten years ago.</p> <p>24 Q. If you look at just the bottom of</p> <p>25 paragraph 3 on that first page it sets the</p>



<p style="text-align: right;">Page 74</p> <p>1 W. Eber</p> <p>2 maturity date at December 31, 2011.</p> <p>3 Do you see that?</p> <p>4 A. Can I read that paragraph?</p> <p>5 Q. If you really need to, yes.</p> <p>6 A. Do you know what this word is here</p> <p>7 (indicating)?</p> <p>8 MR. RAMSEY: Which one?</p> <p>9 THE WITNESS: (Indicating.)</p> <p>10 MR. RAMSEY: Annum.</p> <p>11 A. Okay.</p> <p>12 Q. So do you see the December 31, 2011 is</p> <p>13 set as the maturity date?</p> <p>14 A. Yes.</p> <p>15 Q. How is the maturity date determined?</p> <p>16 A. I don't remember.</p> <p>17 Q. From the date on the top of the</p> <p>18 document, it doesn't have a day but it says</p> <p>19 October 2009.</p> <p>20 Do you see that?</p> <p>21 A. Yeah.</p> <p>22 Q. Do you believe that date to be</p> <p>23 generally accurate as to when this note was</p> <p>24 executed?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 76</p> <p>1 W. Eber</p> <p>2 Go back and read my question two</p> <p>3 questions ago. I think I said it better</p> <p>4 then.</p> <p>5 (Record read.)</p> <p>6 MR. RAMSEY: Same objection.</p> <p>7 MR. BROOK: I guess as long of a</p> <p>8 maturity date as possible.</p> <p>9 MR. CALIHAN: Same objection.</p> <p>10 A. I just don't remember the specifics</p> <p>11 around how the maturity date was determined. I</p> <p>12 just don't. I just don't remember. I know we</p> <p>13 were in desperate need of cash. You know, we had</p> <p>14 a lot of liabilities and needed money. I believe</p> <p>15 Mike Gumaer also looked at this document. He was</p> <p>16 involved in it and our lawyers Harris Beach was</p> <p>17 involved in it as well. Both attorneys and at the</p> <p>18 time we didn't have any other options.</p> <p>19 Q. But you don't recall the maturity date</p> <p>20 being something that was a topic of discussion at</p> <p>21 the time?</p> <p>22 A. I don't remember. This is ten years</p> <p>23 ago. I just don't remember it.</p> <p>24 Q. This is the note, this Exhibit 13 is</p> <p>25 the note on which Eber Metro defaulted by failing</p>
<p style="text-align: right;">Page 75</p> <p>1 W. Eber</p> <p>2 Q. Was that in the time period of the</p> <p>3 extremely difficult times?</p> <p>4 A. October 2009?</p> <p>5 Q. Yes.</p> <p>6 A. Yes.</p> <p>7 Q. So the maturity date is set at just</p> <p>8 over two years after that; correct?</p> <p>9 A. Yes.</p> <p>10 Q. From the perspective of Eber Metro and</p> <p>11 given the extremely difficult times it was facing,</p> <p>12 was it better to have as long a maturity date as</p> <p>13 possible?</p> <p>14 MR. CALIHAN: Objection to form.</p> <p>15 MR. RAMSEY: Form.</p> <p>16 You can answer.</p> <p>17 A. Can you repeat the question?</p> <p>18 Q. Given the difficult times that were</p> <p>19 facing Eber Metro in October 2009, do you believe</p> <p>20 that it was in Eber Metro's interest to have a</p> <p>21 note that was not required to be paid back for as</p> <p>22 long as possible?</p> <p>23 MR. RAMSEY: Form.</p> <p>24 MR. CALIHAN: Objection to form.</p> <p>25 MR. BROOK: That was a bad one.</p>	<p style="text-align: right;">Page 77</p> <p>1 W. Eber</p> <p>2 to make payment in full by December 31, 2011; is</p> <p>3 that right?</p> <p>4 A. I don't remember. There were several</p> <p>5 notes. You know, I don't have all of the notes in</p> <p>6 front of me. There were -- it was over three</p> <p>7 million dollars in what was owed in loans, but I</p> <p>8 don't remember the specifics of it.</p> <p>9 Q. So was it your understanding that Eber</p> <p>10 Metro defaulted on more than one note?</p> <p>11 A. I remember it being three point</p> <p>12 something million dollars of loans that Lester</p> <p>13 made and plus interest, plus the interest.</p> <p>14 Q. But putting aside the other notes and</p> <p>15 I shouldn't have used the word the in my previous</p> <p>16 question, it is your understanding that Eber Metro</p> <p>17 did default on this note; correct?</p> <p>18 A. I just don't remember all the</p> <p>19 specifics Brian. I don't remember all the</p> <p>20 specifics of all the loans. I know that he, that</p> <p>21 Lester loaned in over three million dollars plus</p> <p>22 interest and I know we had the lawyers look at all</p> <p>23 of this, but I don't remember all the specifics.</p> <p>24 I haven't reviewed all the documents.</p> <p>25 Q. What is your understanding of what it</p>

20 (Pages 74 - 77)



<p style="text-align: right;">Page 78</p> <p>1 W. Eber</p> <p>2 means to default on a note?</p> <p>3 A. That's, you know, there is no payments</p> <p>4 made or interest made.</p> <p>5 Q. So for example --</p> <p>6 A. I don't know what the legal definition</p> <p>7 is.</p> <p>8 MR. RAMSEY: All he is asking for is</p> <p>9 your understanding.</p> <p>10 A. There were no payments or interest</p> <p>11 made.</p> <p>12 Q. For example, in your understanding it</p> <p>13 would be a default if the full amount of this note</p> <p>14 were not paid by the maturity date of December 31,</p> <p>15 2011; is that right?</p> <p>16 MR. RAMSEY: Form.</p> <p>17 Go ahead.</p> <p>18 A. Can you rephrase the question?</p> <p>19 Q. In your understanding of what it means</p> <p>20 to default, would it have constituted default if</p> <p>21 Eber Metro did not pay the amount of this note</p> <p>22 including all principal and interest in full on or</p> <p>23 before December 31, 2011, the maturity date?</p> <p>24 MR. RAMSEY: Form.</p> <p>25 You can answer.</p>	<p style="text-align: right;">Page 80</p> <p>1 W. Eber</p> <p>2 question.</p> <p>3 Q. At the time of the default December</p> <p>4 31, 2011 you were the CFO and secretary of Eber</p> <p>5 Metro; correct?</p> <p>6 A. Yes.</p> <p>7 Q. So as CFO were you aware that this</p> <p>8 note was coming due at the end of the month in</p> <p>9 December 2011?</p> <p>10 A. I don't remember. I mean there were</p> <p>11 -- I don't remember all the specifics. There was</p> <p>12 a lot of financial distress Brian. There was a</p> <p>13 lot going on. So for me to step back whatever</p> <p>14 eight years.</p> <p>15 MR. RAMSEY: The answer is you don't</p> <p>16 remember.</p> <p>17 A. I just don't remember. I don't</p> <p>18 remember everything that went on.</p> <p>19 Q. Was there any attempt to try to</p> <p>20 renegotiate this note and try to extend the</p> <p>21 maturity date prior to the maturity date of</p> <p>22 December 31st?</p> <p>23 A. I don't remember.</p> <p>24 Q. In your role with various Eber</p> <p>25 entities you have been involved with bank loans;</p>
<p style="text-align: right;">Page 79</p> <p>1 W. Eber</p> <p>2 A. Sorry?</p> <p>3 MR. RAMSEY: Go ahead and answer.</p> <p>4 A. Yes, that would be default if they</p> <p>5 didn't pay on it.</p> <p>6 Q. Do you have any reason to believe that</p> <p>7 Eber Metro paid all principal and interest on this</p> <p>8 note in full on or before December 31, 2011?</p> <p>9 A. Rephrase that. Did?</p> <p>10 Q. Did Eber Metro pay this note in full?</p> <p>11 A. No, no.</p> <p>12 Q. So I am having a hard time trying to</p> <p>13 understand how you can be so confused.</p> <p>14 So you understand that this note was</p> <p>15 not paid by the maturity date; right?</p> <p>16 A. No. It was not paid.</p> <p>17 Q. So in your understanding of what a</p> <p>18 default is you understand that there was a default</p> <p>19 on this note; correct?</p> <p>20 A. Yes.</p> <p>21 MR. RAMSEY: You have answered the</p> <p>22 question. You are good, okay.</p> <p>23 A. I just haven't looked at these</p> <p>24 documents in a long time.</p> <p>25 MR. RAMSEY: Okay. Wait for a</p>	<p style="text-align: right;">Page 81</p> <p>1 W. Eber</p> <p>2 correct?</p> <p>3 A. Yes.</p> <p>4 Q. And are you generally aware of when</p> <p>5 those loans are becoming due, maturing and have to</p> <p>6 be paid in full?</p> <p>7 MR. RAMSEY: You are talking just in</p> <p>8 general or --</p> <p>9 A. In general?</p> <p>10 Q. The Eber entities.</p> <p>11 I don't know if there was a bank loan</p> <p>12 specific to Eber Metro, but in your role with</p> <p>13 various Eber entities have you been involved in</p> <p>14 tracking whether any bank loans are about to</p> <p>15 mature and become due? And by be involved you</p> <p>16 doing it or someone else is doing it and telling</p> <p>17 you about it.</p> <p>18 A. Someone else is doing it and telling</p> <p>19 me about it.</p> <p>20 MR. CALIHAN: I am sorry.</p> <p>21 Could you read back the question? I</p> <p>22 missed it completely.</p> <p>23 (Record read.)</p> <p>24 A. And I also have been aware of when</p> <p>25 some loans have come due too.</p>

<p style="text-align: right;">Page 82</p> <p>1 W. Eber</p> <p>2 Q. Are you also in those situations aware</p> <p>3 of whether the company is going to be able to pay</p> <p>4 those loans or not?</p> <p>5 MR. RAMSEY: Form. Go ahead.</p> <p>6 A. Yeah. I had some idea, yes.</p> <p>7 Q. And when the company has not been in a</p> <p>8 position where it can pay those loans, what have</p> <p>9 you done?</p> <p>10 MR. RAMSEY: Form.</p> <p>11 MR. BROOK: Basis?</p> <p>12 MR. RAMSEY: You are assuming she did</p> <p>13 something or had to do something.</p> <p>14 You can answer the question.</p> <p>15 A. What's the question?</p> <p>16 Q. In those situations where the company</p> <p>17 has a loan to a bank that's becoming due but the</p> <p>18 company is not able to pay it in full back on the</p> <p>19 maturity date what, if anything, have you done</p> <p>20 about it?</p> <p>21 MR. RAMSEY: Same objection.</p> <p>22 Go ahead. Don't let me throw you off.</p> <p>23 A. Well, let's talk about the Wells Fargo</p> <p>24 loan, okay. With Eber Brothers 130 million</p> <p>25 dollars. I had no idea. I was not involved in</p>	<p style="text-align: right;">Page 84</p> <p>1 W. Eber</p> <p>2 in to secure it.</p> <p>3 Q. So you asked the bank to extend the</p> <p>4 loan, that was one of the things you did; right?</p> <p>5 MR. RAMSEY: Form.</p> <p>6 A. Or we had lawyers try to help us</p> <p>7 extend it.</p> <p>8 Q. Without getting into the details of</p> <p>9 what you specifically discussed with the lawyers</p> <p>10 since there was a pending objection on that, what</p> <p>11 was it that the lawyers -- what was your</p> <p>12 understanding of what the lawyers were going to do</p> <p>13 to extend the note without the bank's consent?</p> <p>14 MR. RAMSEY: Form.</p> <p>15 A. Say that -- ask that question again.</p> <p>16 Q. Were the lawyers doing something that</p> <p>17 would involve -- was it your understanding that</p> <p>18 the lawyers could do something to extend the loans</p> <p>19 without the bank agreeing to it?</p> <p>20 MR. CALIHAN: Objection to form.</p> <p>21 A. Say it again the lawyers.</p> <p>22 Q. Was it your understanding that by</p> <p>23 hiring lawyers that could be a way to extend the</p> <p>24 loan without having the bank agree to extend the</p> <p>25 loan?</p>
<p style="text-align: right;">Page 83</p> <p>1 W. Eber</p> <p>2 that.</p> <p>3 Q. I am talking about when you were</p> <p>4 involved. Situations when you were involved you</p> <p>5 were being made aware of it becoming due and you</p> <p>6 realized that the company could not just pay the</p> <p>7 loan off in full.</p> <p>8 What, if anything, did you do in that</p> <p>9 situation?</p> <p>10 A. In some circumstances we had to ask</p> <p>11 Lester to loan them money.</p> <p>12 Q. And in other circumstances did you</p> <p>13 talk to the banks?</p> <p>14 A. We had to hire -- yeah. We talked to</p> <p>15 banks. We talked to them. We had lawyers.</p> <p>16 Q. What did you talk about, the banks?</p> <p>17 A. I mean, like with Canandaigua Bank?</p> <p>18 Q. If that's one that meets the</p> <p>19 situation.</p> <p>20 A. You know, I don't remember all the</p> <p>21 specific conversations we had with them. You</p> <p>22 know, we tried to extend or Lester had to</p> <p>23 personally put money in to secure the loan. He</p> <p>24 had to put more money in to secure it. He had to</p> <p>25 leave more security than he had to put more cash</p>	<p style="text-align: right;">Page 85</p> <p>1 W. Eber</p> <p>2 MR. RAMSEY: Form.</p> <p>3 A. I don't remember. I don't remember.</p> <p>4 I don't know.</p> <p>5 Q. When you asked or when one of the Eber</p> <p>6 companies has asked banks to extend the loans such</p> <p>7 as Canandaigua Bank, it has sometimes been</p> <p>8 successful in getting that to happen; hasn't it?</p> <p>9 A. They extended some loans, yes. But</p> <p>10 they always said they wanted to get out of the</p> <p>11 loan.</p> <p>12 Q. But they extended it anyway; didn't</p> <p>13 they?</p> <p>14 MR. CALIHAN: Objection to form.</p> <p>15 MR. RAMSEY: Form.</p> <p>16 Go ahead.</p> <p>17 A. Yes, they did extend it, but they</p> <p>18 would only do it under the circumstances of Lester</p> <p>19 personally guaranteeing it and securing it with</p> <p>20 five hundred thousand and then pledging more</p> <p>21 assets and more assets and --</p> <p>22 Q. Sorry. Go ahead.</p> <p>23 MR. RAMSEY: Are you done with your</p> <p>24 answer?</p> <p>25 THE WITNESS: Yes.</p>

<p style="text-align: right;">Page 86</p> <p>1 W. Eber</p> <p>2 Q. When was the first time that a bank</p> <p>3 asked Lester to pledge personal assets to support</p> <p>4 his loan?</p> <p>5 A. I don't know.</p> <p>6 Q. Was it before the Alexbay deal or</p> <p>7 after the Alexbay deal?</p> <p>8 A. I don't remember. I know that I think</p> <p>9 the 120 thousand was -- it may have been after. I</p> <p>10 am not sure of the additional securities he had to</p> <p>11 put there. I don't remember specifically.</p> <p>12 Q. Why didn't you ask Lester to extend</p> <p>13 the maturity date on the line of credit note</p> <p>14 Exhibit 13?</p> <p>15 MR. RAMSEY: Form.</p> <p>16 MR. BROOK: Basis?</p> <p>17 MR. RAMSEY: I don't know she had an</p> <p>18 obligation to.</p> <p>19 MR. BROOK: Whatever.</p> <p>20 A. Sorry?</p> <p>21 Q. You can answer the question.</p> <p>22 A. What was the question?</p> <p>23 MR. BROOK: Can you read it back</p> <p>24 please?</p> <p>25 (Record read.)</p>	<p style="text-align: right;">Page 88</p> <p>1 W. Eber</p> <p>2 MR. BROOK: I mean it is her corporate</p> <p>3 rep.</p> <p>4 Q. You said a minute ago you didn't think</p> <p>5 that you had to ask to extend the maturity.</p> <p>6 What was your basis for that belief?</p> <p>7 A. I don't remember.</p> <p>8 Q. Did you think it was a good thing for</p> <p>9 Eber Metro to default on the note?</p> <p>10 MR. RAMSEY: Form.</p> <p>11 A. Did I think it was a good thing for</p> <p>12 Metro? I don't remember. I just remember there</p> <p>13 was no -- there weren't a lot of alternatives</p> <p>14 here. And I spoke with Mike.</p> <p>15 MR. CALIHAN: Don't disclose legal</p> <p>16 advice.</p> <p>17 A. Okay. I spoke with Mike. He was an</p> <p>18 attorney representing us. I definitely spoke with</p> <p>19 him.</p> <p>20 MR. BROOK: Just so the record is</p> <p>21 clear, we do not waive the right to insist</p> <p>22 on getting complete answers to what the</p> <p>23 basis was for her action if she is going to</p> <p>24 say anything like that.</p> <p>25 MR. CALIHAN: Brian, would you say</p>
<p style="text-align: right;">Page 87</p> <p>1 W. Eber</p> <p>2 A. I didn't have to.</p> <p>3 Q. Why do you say that?</p> <p>4 A. I don't remember all the details</p> <p>5 around it. There was a lot going on and I just</p> <p>6 don't remember. I don't know that, you know, he</p> <p>7 -- I don't remember. I may have talked to Mike</p> <p>8 Gumaer the attorney. I don't remember.</p> <p>9 Q. Are you referring to Mike Gumaer as</p> <p>10 the attorney or are you referring to another</p> <p>11 attorney and Mike Gumaer?</p> <p>12 A. I don't remember all the attorneys</p> <p>13 involved, that were involved specifically. I mean</p> <p>14 I did talk to Mike about these notes. He</p> <p>15 definitely.</p> <p>16 MR. CALIHAN: Don't disclose any legal</p> <p>17 --</p> <p>18 MR. BROOK: She is absolutely allowed</p> <p>19 to do that.</p> <p>20 MR. RAMSEY: Well, there is either two</p> <p>21 hats. There is a lawyer hat and there is a</p> <p>22 non-lawyer hat. So if you are asking about</p> <p>23 the non-lawyer questions with Gumaer that's</p> <p>24 one thing, but he also served --</p> <p>25 A. I saw him as the lawyer.</p>	<p style="text-align: right;">Page 89</p> <p>1 W. Eber</p> <p>2 that again?</p> <p>3 MR. BROOK: Just saying reserving</p> <p>4 rights with respect to these instructions to</p> <p>5 the witness not to answer questions when she</p> <p>6 has already said what she thought and</p> <p>7 appears to be relying on advice that she got</p> <p>8 at the time. We don't have to litigate that</p> <p>9 now.</p> <p>10 MR. CALIHAN: Just to make sure there</p> <p>11 is no misunderstanding, so your position is</p> <p>12 is that testimony, that reliance constitutes</p> <p>13 a waiver or that she can not raise it</p> <p>14 without disclosing the underlying advice?</p> <p>15 MR. BROOK: I think that if there is</p> <p>16 going to be -- I don't know that that</p> <p>17 testimony does, but if there is going to be</p> <p>18 reliance on the assertion that she believed</p> <p>19 at the time that she didn't have an</p> <p>20 obligation to do so as far as purporting her</p> <p>21 good faith and such, then that is</p> <p>22 essentially the advice of counsel and it</p> <p>23 does not constitute a waiver.</p> <p>24 MR. CALIHAN: I will consider it and</p> <p>25 get back to you after lunch.</p>

23 (Pages 86 - 89)

<p style="text-align: right;">Page 90</p> <p>1 W. Eber</p> <p>2 MR. BROOK: Okay. We only have a</p> <p>3 couple of more minutes here, so I want to</p> <p>4 try to wrap this up.</p> <p>5 BY MR. BROOK:</p> <p>6 Q. Did you have any third parties or</p> <p>7 outside bankers or accountants opine on the</p> <p>8 fairness of the line of credit note Exhibit 13?</p> <p>9 MR. RAMSEY: Form.</p> <p>10 Q. Were any third parties such as</p> <p>11 accountants or investment bankers or the like ever</p> <p>12 asked to opine on the fairness of the credit note</p> <p>13 to Eber Metro?</p> <p>14 MR. RAMSEY: Same objection.</p> <p>15 A. Like a lawyer?</p> <p>16 Q. Anyone.</p> <p>17 A. The lawyers looked at it, yes.</p> <p>18 Q. Were they asked to opine on whether it</p> <p>19 was fair from an economic point of view to Metro?</p> <p>20 MR. RAMSEY: Don't talk about any</p> <p>21 conversations you had with lawyers.</p> <p>22 A. I am not going to talk about any</p> <p>23 conversations I had with lawyers.</p> <p>24 Q. I am not asking about legal advice. I</p> <p>25 am asking about economic advice. Whether anyone,</p>	<p style="text-align: right;">Page 92</p> <p>1 W. Eber</p> <p>2 record.</p> <p>3 THE VIDEOGRAPHER: This marks the end</p> <p>4 of media unit number 2 in the videotaped</p> <p>5 deposition of Wendy Eber. We are going off</p> <p>6 the record. The time is 12:24.</p> <p>7 (Luncheon recess: 12:24 p.m.)</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 91</p> <p>1 W. Eber</p> <p>2 lawyers or non-lawyers was asked to opine on</p> <p>3 whether from an economic point of view the line of</p> <p>4 credit note was fair to Eber Brothers or Eber</p> <p>5 Metro?</p> <p>6 MR. RAMSEY: Form.</p> <p>7 A. It was all reviewed by our lawyers.</p> <p>8 Q. And was it your understanding that</p> <p>9 your lawyers reviewed the economics of the</p> <p>10 transaction as well?</p> <p>11 MR. RAMSEY: Form.</p> <p>12 I am not sure you can parse it out</p> <p>13 Brian, but if you can parse it out, go</p> <p>14 ahead.</p> <p>15 A. This was all reviewed by the lawyers</p> <p>16 you know and I relied on my lawyers.</p> <p>17 Q. Again, lawyers here were Harris Beach;</p> <p>18 right?</p> <p>19 A. Well, we had, you know, Mike looked at</p> <p>20 this too. I would consider him my lawyer as well.</p> <p>21 You know we had Harris Beach involved with the</p> <p>22 document.</p> <p>23 Q. Was Glenn Sturm involved in this one?</p> <p>24 A. I don't remember. I don't remember.</p> <p>25 MR. BROOK: We have to go off the</p>	<p style="text-align: right;">Page 93</p> <p>1 W. Eber</p> <p>2 AFTERNOON SESSION.</p> <p>3 (1:10 p.m.)</p> <p>4 WENDY EBER,</p> <p>5 having been previously sworn, resumed the</p> <p>6 stand and testified further as follows:</p> <p>7 EXAMINATION (Cont'd)</p> <p>8 BY MR. BROOK:</p> <p>9 THE VIDEOGRAPHER: This marks the</p> <p>10 beginning of media unit number three in the</p> <p>11 videotaped deposition of Wendy Eber. We are</p> <p>12 going on the record. The time is 1:11.</p> <p>13 Q. We are back after lunch.</p> <p>14 Miss Eber, were you able to get some</p> <p>15 food during the break?</p> <p>16 A. Yes, thank you.</p> <p>17 Q. Is there any reason why you are not</p> <p>18 able to continue with this deposition and be able</p> <p>19 to answer questions fully and truthfully?</p> <p>20 A. No.</p> <p>21 Q. I am showing you now what has been</p> <p>22 marked as Exhibit 14. It is a document entitled A</p> <p>23 Stock Purchase Agreement bearing --</p> <p>24 MR. RAMSEY: I'm sorry Brian, I should</p> <p>25 have done this first. The discussion we had</p>

24 (Pages 90 - 93)



<p style="text-align: right;">Page 94</p> <p>1 W. Eber</p> <p>2 immediately before we went off the record</p> <p>3 regarding the question extending the</p> <p>4 maturity date of the loan and the privilege</p> <p>5 issue that we raised, as long as we are in</p> <p>6 agreement that this is a narrow exception</p> <p>7 not a complete waiver of privilege, we will</p> <p>8 permit Miss Eber to answer the questions</p> <p>9 about the basis for her understanding as to</p> <p>10 why she elected not to pursue an extension</p> <p>11 of the maturity date.</p> <p>12 MR. BROOK: I am not going to agree</p> <p>13 that it is not a waiver of the subject</p> <p>14 matter. If it is a waiver. I have done</p> <p>15 those agreements before and it never works</p> <p>16 out. So if this is condition on it only</p> <p>17 being limited to advice she got in that</p> <p>18 particular month or something --</p> <p>19 MR. RAMSEY: That's exactly what it</p> <p>20 is.</p> <p>21 MR. BROOK: Then I don't agree with</p> <p>22 that and --</p> <p>23 MR. CALIHAN: Brian, what is your</p> <p>24 position on that?</p> <p>25 MR. BROOK: The position is that it is</p>	<p style="text-align: right;">Page 96</p> <p>1 W. Eber</p> <p>2 at the very bottom but it is EB-00020488 to 492.</p> <p>3 Do you recognize this document?</p> <p>4 (Plaintiffs' Exhibit 14, a document</p> <p>5 entitled Stock Purchase Agreement Bates</p> <p>6 stamped EB-00020488 to 492, marked for</p> <p>7 identification, as of this date.)</p> <p>8 A. Should I read the whole thing?</p> <p>9 Q. If you need to to recognize it, but my</p> <p>10 question simply is: Do you recognize this</p> <p>11 document?</p> <p>12 MR. RAMSEY: Look at the first page.</p> <p>13 Do you recognize what it is?</p> <p>14 A. Yeah.</p> <p>15 Q. What is it?</p> <p>16 A. It says stock purchase agreement.</p> <p>17 Q. And do you recognize the party that is</p> <p>18 purchasing stock under this agreement?</p> <p>19 A. Yes.</p> <p>20 Q. It is Polebridge Bowman.</p> <p>21 That's the entity we were talking</p> <p>22 about earlier that was created by Glenn Sturm;</p> <p>23 correct?</p> <p>24 A. Yes.</p> <p>25 Q. And turn to the last page. It has</p>
<p style="text-align: right;">Page 95</p> <p>1 W. Eber</p> <p>2 not necessarily by her saying it here the</p> <p>3 response to a question that it is a waiver</p> <p>4 but if there is going to be any sort of</p> <p>5 reliance on an assertion that she had this</p> <p>6 belief, then the basis of that belief and</p> <p>7 things like that, that's a defense and I am</p> <p>8 entitled to all the discovery that's related</p> <p>9 to that defense to see whether it is true or</p> <p>10 not.</p> <p>11 MR. RAMSEY: I don't necessarily</p> <p>12 disagree with that. I think it is</p> <p>13 encapsulated in the answer that she gave</p> <p>14 you, but I just want to make sure you are</p> <p>15 not taking this as a larger waiver. We can</p> <p>16 leave that for another time.</p> <p>17 MR. BROOK: We can test the boundaries</p> <p>18 when we get to it, but I appreciate you</p> <p>19 clarifying that and I may go back to that at</p> <p>20 another time.</p> <p>21 MR. RAMSEY: Okay.</p> <p>22 BY MR. BROOK:</p> <p>23 Q. So stay focused for now on Exhibit 14</p> <p>24 which is a document entitled Stock Purchase</p> <p>25 Agreement. The Bates number appears to be cut off</p>	<p style="text-align: right;">Page 97</p> <p>1 W. Eber</p> <p>2 Lester's signature on it on behalf of Eber Metro.</p> <p>3 Do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. Now what was Lester's role in</p> <p>6 connection with negotiating or approving this</p> <p>7 transaction?</p> <p>8 A. I don't remember the exact specifics.</p> <p>9 Q. Is it still your recollection that</p> <p>10 this was primarily negotiated by you?</p> <p>11 A. Well, I think you know we had the</p> <p>12 lawyers involved with it and he was, you know,</p> <p>13 obviously involved with them and I spoke to him</p> <p>14 but I don't remember any specific.</p> <p>15 Q. Which lawyers were involved with this</p> <p>16 one on behalf of Eber Metro?</p> <p>17 A. Well, it would have been Harris Beach</p> <p>18 would have had some involvement and would have had</p> <p>19 Mike involved, Mike Gumaer.</p> <p>20 Q. Anyone else?</p> <p>21 A. I don't remember.</p> <p>22 Q. If you would please turn to page 3 and</p> <p>23 directing your attention specifically to Article</p> <p>24 5.04.</p> <p>25 Do you see that?</p>

25 (Pages 94 - 97)

<p style="text-align: right;">Page 98</p> <p>1 W. Eber</p> <p>2 A. Yes.</p> <p>3 RQ MR. BROOK: Before my next question I</p> <p>4 will put in a request on the record for a</p> <p>5 somewhat clearer copy of this.</p> <p>6 A. It is hard to read.</p> <p>7 Q. I will just take my best shot at</p> <p>8 reading this and I would like you to read along</p> <p>9 with me and let me know if I read anything</p> <p>10 incorrectly. Section 5.04 says "To the extent</p> <p>11 that buyer proposes to sell all or a portion of</p> <p>12 the units to a third party, then buyer shall</p> <p>13 comply with the rights of refusal set forth in</p> <p>14 this section. Upon receipt by buyer of a bona</p> <p>15 fide written offer from a third-party to purchase</p> <p>16 all or a portion of the units, then buyer shall</p> <p>17 submit a written notice to each of Wendy Eber,</p> <p>18 seller and in brackets EG, in parenthesis the</p> <p>19 quote proposed sale notice, end quote end</p> <p>20 parenthesis, setting forth the material terms</p> <p>21 under which the proposed sale is to take place and</p> <p>22 offering to sell such amount of units on the terms</p> <p>23 described therein. Miss Eber shall have the first</p> <p>24 right to purchase all the units set forth on the</p> <p>25 proposed sale notice (and on the terms described</p>	<p style="text-align: right;">Page 100</p> <p>1 W. Eber</p> <p>2 correct?</p> <p>3 MR. RAMSEY: Form.</p> <p>4 The question is what her understanding</p> <p>5 is?</p> <p>6 MR. BROOK: I am asking if that's --</p> <p>7 MR. RAMSEY: It says what -- the</p> <p>8 document says what it says and if you want</p> <p>9 to ask her understanding, that's fine.</p> <p>10 MR. BROOK: Yes. I am asking still</p> <p>11 for her understanding of what that means;</p> <p>12 correct.</p> <p>13 A. Yeah.</p> <p>14 Q. Did you request this right of first</p> <p>15 refusal?</p> <p>16 A. I don't remember. I don't.</p> <p>17 Q. How did this right of first refusal</p> <p>18 get into this document?</p> <p>19 A. I don't remember. I don't remember.</p> <p>20 Q. Did you give anything to Eber Metro in</p> <p>21 exchange for receiving this right of first</p> <p>22 refusal?</p> <p>23 MR. RAMSEY: Form.</p> <p>24 MR. BROOK: Basis?</p> <p>25 MR. RAMSEY: Give.</p>
<p style="text-align: right;">Page 99</p> <p>1 W. Eber</p> <p>2 therein)." And there is more but I am going to</p> <p>3 stop there.</p> <p>4 Did you follow with that Miss Eber?</p> <p>5 A. Mm-hmm, yes.</p> <p>6 Q. So this agreement gave you the right</p> <p>7 of first refusal for any sale of the units that</p> <p>8 were sold to Polebridge Bowman; is that right?</p> <p>9 A. Well, I am not a lawyer, so.</p> <p>10 Q. Do you know what a right of first</p> <p>11 refusal is?</p> <p>12 A. In legal terms?</p> <p>13 Q. What is your understanding of what a</p> <p>14 right of first refusal is?</p> <p>15 A. I am not exactly sure.</p> <p>16 MR. RAMSEY: Form.</p> <p>17 Go ahead.</p> <p>18 Q. I am just asking for your</p> <p>19 understanding.</p> <p>20 A. It does say I have the right of first</p> <p>21 refusal. Yeah.</p> <p>22 Q. So that means before anyone else can</p> <p>23 buy these units, you will have a chance to buy the</p> <p>24 units on at least the same terms that are offered</p> <p>25 by a third party in a written bona fide offer;</p>	<p style="text-align: right;">Page 101</p> <p>1 W. Eber</p> <p>2 MR. BROOK: Okay.</p> <p>3 Q. Did you pay anything to Eber Metro in</p> <p>4 exchange for receiving this right of first</p> <p>5 refusal?</p> <p>6 A. No.</p> <p>7 Q. Did you give up any other rights or</p> <p>8 property besides money to Eber Metro in exchange</p> <p>9 for this right of first refusal?</p> <p>10 MR. RAMSEY: Form.</p> <p>11 Go ahead you can answer.</p> <p>12 A. I work there. I worked at Metro. I</p> <p>13 mean I worked, yeah.</p> <p>14 Q. So was this a form of compensation for</p> <p>15 your work then, is that what you are saying?</p> <p>16 A. It could be. I mean you know, I am</p> <p>17 just saying I worked there, so it is not like I</p> <p>18 didn't work there. I worked there.</p> <p>19 Q. And are you aware of any documents</p> <p>20 that you have or you have seen in connection with</p> <p>21 this case that support your understanding that</p> <p>22 this is a form of compensation to you, that this</p> <p>23 right of first refusal is a form of compensation</p> <p>24 to you for your work?</p> <p>25 MR. RAMSEY: Form.</p>



<p style="text-align: right;">Page 102</p> <p>1 W. Eber</p> <p>2 A. I don't remember. I mean, I just --</p> <p>3 there is a lot of documents. I just don't</p> <p>4 remember.</p> <p>5 Q. So you can't think of anything off the</p> <p>6 top of your head; is that right?</p> <p>7 A. Right off the top of my head, there is</p> <p>8 a lot of documents in this case.</p> <p>9 Q. Did the board ever approve your</p> <p>10 receiving a right of first refusal to the</p> <p>11 Polebridge Bowman shares as a form of</p> <p>12 compensation?</p> <p>13 A. I don't remember. I believe the board</p> <p>14 approved this document, but I don't specifically</p> <p>15 remember on that.</p> <p>16 Q. At the time of this stock purchase</p> <p>17 agreement May 2010 is when it is dated as of, Eber</p> <p>18 Metro was still indirectly controlled by the Allen</p> <p>19 Eber Trust; correct?</p> <p>20 A. Yes.</p> <p>21 Q. Did the trustees of the Allen Eber</p> <p>22 Trust approve of this right of first refusal being</p> <p>23 given to you or granted to you?</p> <p>24 A. Not that I am aware of, no. Wait.</p> <p>25 Did the trustees?</p>	<p style="text-align: right;">Page 104</p> <p>1 W. Eber</p> <p>2 any conversation. She doesn't have to say</p> <p>3 what advice he gave.</p> <p>4 Q. But if there was any conversation</p> <p>5 where he said something indicating that he was</p> <p>6 aware that there was a right of first refusal</p> <p>7 being granted, please tell me about it.</p> <p>8 A. I don't remember a conversation.</p> <p>9 There may have been an e-mail, but I don't</p> <p>10 remember a conversation with him.</p> <p>11 RQ MR. BROOK: If there is any e-mail</p> <p>12 with Mike Gumaer reflecting the right of</p> <p>13 first refusal, we request that it be</p> <p>14 produced to us in redacted form if</p> <p>15 necessary.</p> <p>16 MR. RAMSEY: I will check.</p> <p>17 BY MR. BROOK:</p> <p>18 Q. Was this right of first refusal ever</p> <p>19 discussed with anyone from Canandaigua National</p> <p>20 Bank, to your knowledge?</p> <p>21 A. I don't remember.</p> <p>22 Q. Do you have an employment contract</p> <p>23 with Eber Metro, something in writing?</p> <p>24 A. Yes.</p> <p>25 Q. Did that provide for the terms of your</p>
<p style="text-align: right;">Page 103</p> <p>1 W. Eber</p> <p>2 Q. Yes. I asked if the trustees of the</p> <p>3 trust approved.</p> <p>4 A. I believe this was Mike Gumaer saw</p> <p>5 this who was an attorney and he was a trustee and</p> <p>6 Lester signed this. He is also a trustee but I am</p> <p>7 not aware of a document.</p> <p>8 Q. Do you know whether Mike Gumaer</p> <p>9 actually read this specific paragraph 5.04?</p> <p>10 MR. RAMSEY: Form.</p> <p>11 A. He may have. I mean, I believe he</p> <p>12 read this document. So yes, I mean he may have.</p> <p>13 He may have read it.</p> <p>14 Q. Did you ever discuss this right of</p> <p>15 first refusal with Mike Gumaer?</p> <p>16 MR. RAMSEY: In the context of counsel</p> <p>17 or trustee?</p> <p>18 MR. BROOK: In any context to suggest</p> <p>19 that he knew about it.</p> <p>20 MR. RAMSEY: Don't discuss any</p> <p>21 conversations that were in connection with</p> <p>22 legal advice. If there was another</p> <p>23 conversation you had with Gumaer, that's</p> <p>24 fine.</p> <p>25 MR. BROOK: I would actually ask that</p>	<p style="text-align: right;">Page 105</p> <p>1 W. Eber</p> <p>2 compensation?</p> <p>3 A. There were terms in there of</p> <p>4 compensation I believe. I don't remember all the</p> <p>5 details.</p> <p>6 RQ MR. BROOK: I am not sure that we have</p> <p>7 seen that. So in an abundance of caution, I</p> <p>8 am going to make a request that if there are</p> <p>9 any employment contracts with any of the</p> <p>10 Eber entities for either Wendy or Lester</p> <p>11 Eber that those be produced to us.</p> <p>12 MR. RAMSEY: Note any document</p> <p>13 requests on the record please. Thanks.</p> <p>14 Q. To the best of your recollection, did</p> <p>15 any employment contract that you had ever make</p> <p>16 reference to a right of first refusal?</p> <p>17 A. I don't remember. I mean, it is many</p> <p>18 years ago. I don't remember.</p> <p>19 Q. I am going to return now to Exhibit 13</p> <p>20 which is the line of credit note we were</p> <p>21 discussing before lunch. It should be in front of</p> <p>22 you.</p> <p>23 Do you see it?</p> <p>24 MR. RAMSEY: Do you got it?</p> <p>25 THE WITNESS: Yes.</p>

<p style="text-align: right;">Page 106</p> <p>1 W. Eber</p> <p>2 This one (indicating)?</p> <p>3 MR. RAMSEY: Yes.</p> <p>4 A. Yes.</p> <p>5 Q. Before we broke I asked you some</p> <p>6 questions about what you did or didn't do as the</p> <p>7 maturity date was coming due and on the topic of</p> <p>8 whether you requested an extension of that</p> <p>9 maturity date you testified that it was your</p> <p>10 understanding that you didn't have to do so; is</p> <p>11 that correct?</p> <p>12 A. I don't remember. I mean I don't</p> <p>13 remember. I don't remember.</p> <p>14 Q. So why didn't you request that Lester</p> <p>15 extend the maturity date of this line of credit</p> <p>16 note?</p> <p>17 A. I don't remember.</p> <p>18 Q. Was it your understanding that you did</p> <p>19 not have to request an extension of a maturity</p> <p>20 date on this line of credit note as part of your</p> <p>21 obligations to Eber Metro?</p> <p>22 A. Would you rephrase that?</p> <p>23 Q. Do you recall your testimony earlier</p> <p>24 today that you believed you did not have to</p> <p>25 request an extension of the maturity date of this</p>	<p style="text-align: right;">Page 108</p> <p>1 W. Eber</p> <p>2 original note; correct, on behalf of Eber Metro?</p> <p>3 A. Yes.</p> <p>4 Q. And so did Lester even though he was</p> <p>5 the counterparty; correct?</p> <p>6 A. Yes.</p> <p>7 Q. And was it your understanding that</p> <p>8 Lester was negotiating -- withdrawn.</p> <p>9 Who at Eber Metro was responsible for</p> <p>10 ensuring that this line of credit note was paid</p> <p>11 when it became due?</p> <p>12 A. Metro. Metro would be responsible for</p> <p>13 it to pay it.</p> <p>14 Q. I am asking who was responsible as a</p> <p>15 person because companies are made up of people.</p> <p>16 Was it -- let's step back even further.</p> <p>17 Besides you and Lester, was there</p> <p>18 anyone else who worked for Eber Metro as of late</p> <p>19 2011?</p> <p>20 A. No.</p> <p>21 Q. Between you and Lester, who was</p> <p>22 responsible for ensuring that this line of credit</p> <p>23 note was paid when it became due?</p> <p>24 A. Me.</p> <p>25 Q. And does that mean that you also had</p>
<p style="text-align: right;">Page 107</p> <p>1 W. Eber</p> <p>2 note?</p> <p>3 A. I don't remember. You know, I may</p> <p>4 have spoke to counsel on it about that. It is</p> <p>5 2011 is the maturity date. I really don't</p> <p>6 remember.</p> <p>7 Q. As you sit here today, is it your</p> <p>8 understanding you did not have to request that</p> <p>9 Lester extend the maturity date of this note?</p> <p>10 A. Well, it matured on December -- you</p> <p>11 are saying after December 31, 2011?</p> <p>12 Q. I am asking whether it is your</p> <p>13 understanding today since you said it is hard to</p> <p>14 remember ten years ago, is it your understanding</p> <p>15 today that back in December 2011 or November 2011</p> <p>16 that you had no obligation under law, policy or</p> <p>17 otherwise, to request that Lester extend the</p> <p>18 maturity date of this note?</p> <p>19 A. This was done by the lawyers.</p> <p>20 MR. RAMSEY: He is asking for your</p> <p>21 understanding.</p> <p>22 A. Oh, yeah. That it didn't need to be.</p> <p>23 I am sorry.</p> <p>24 Asking what?</p> <p>25 Q. So as the -- I mean you signed the</p>	<p style="text-align: right;">Page 109</p> <p>1 W. Eber</p> <p>2 the responsibility, if anyone did, to request an</p> <p>3 extension of this line of credit note maturity in</p> <p>4 the event that payment in full was not possible?</p> <p>5 A. Well, this was a document done by</p> <p>6 lawyers, so.</p> <p>7 Q. I am not asking about the document. I</p> <p>8 am asking about your assignment of</p> <p>9 responsibilities. You were responsible for</p> <p>10 ensuring payment.</p> <p>11 Was it not also your responsibility if</p> <p>12 payment was not possible to try to get an</p> <p>13 extension of this note to avoid default?</p> <p>14 MR. RAMSEY: Form.</p> <p>15 A. Well, you got to have Lester wanting</p> <p>16 to extend it too. I mean it is not just me hoping</p> <p>17 to, you know, extend it.</p> <p>18 Q. Did Lester tell you he did not want to</p> <p>19 extend this note?</p> <p>20 A. I don't remember the conversations</p> <p>21 that we had about this particular notice from</p> <p>22 2011.</p> <p>23 Q. So --</p> <p>24 A. We were trying to, you know, raise</p> <p>25 money. We were going out and talking to banks. I</p>

28 (Pages 106 - 109)

<p style="text-align: right;">Page 110</p> <p>1 W. Eber</p> <p>2 mean, we had several presentations to many banks</p> <p>3 trying to get money, to raise money. So there was</p> <p>4 a lot of conversations going on. I don't remember</p> <p>5 the specifics around this particular note. You</p> <p>6 know, we also asked Sally and Audrey to</p> <p>7 participate. It was a disaster.</p> <p>8 Q. When was it that you had asked Sally</p> <p>9 and Audrey to participate?</p> <p>10 MR. RAMSEY: Do you recall?</p> <p>11 A. 2010.</p> <p>12 Q. So it was --</p> <p>13 A. I don't know.</p> <p>14 Q. So it was more than a year before the</p> <p>15 maturity date of the line of credit note; correct?</p> <p>16 A. I don't remember all the specific</p> <p>17 dates. This is many years ago. I know we were</p> <p>18 trying to go to other banks. I talked to many. I</p> <p>19 had presentations with many banks. I also --</p> <p>20 Q. Did you also have a presentation in</p> <p>21 2011?</p> <p>22 MR. RAMSEY: Let her answer the</p> <p>23 question.</p> <p>24 MR. BROOK: I don't think it is</p> <p>25 responsive to my question that's pending.</p>	<p style="text-align: right;">Page 112</p> <p>1 W. Eber</p> <p>2 A. It may take me a couple of minutes.</p> <p>3 Can I think for a couple of minutes</p> <p>4 here? Okay.</p> <p>5 Q. Do you remember anyone at any time go</p> <p>6 ahead and say that so you don't forget it.</p> <p>7 A. There was a company called Profit</p> <p>8 Stars that tries to find banks. Mike's daughter</p> <p>9 works for a bank. It is in New York. I forgot</p> <p>10 the name. I think it is Republic something. I</p> <p>11 don't know if that was the name of it.</p> <p>12 There was I think a bank in</p> <p>13 Westchester. I don't remember the name of that</p> <p>14 bank.</p> <p>15 We did, I remember we did speak with</p> <p>16 Webster Bank but it was a later date. It wasn't</p> <p>17 this particular time period. I just don't</p> <p>18 remember. I mean this is a lot of years ago. I</p> <p>19 don't remember. We did try talking to several</p> <p>20 different banks.</p> <p>21 Q. Other than talking to banks what, if</p> <p>22 anything else, do you think you may have done as</p> <p>23 part of your responsibility to try and ensure</p> <p>24 there was not a default on the line of credit</p> <p>25 note?</p>
<p style="text-align: right;">Page 111</p> <p>1 W. Eber</p> <p>2 MR. RAMSEY: Well let her finish it</p> <p>3 before you decide.</p> <p>4 Are you done with your answer?</p> <p>5 A. Possibly that I did have some</p> <p>6 presentations to banks. I also -- can I just</p> <p>7 think for a second? I am just thinking.</p> <p>8 I believe I did have some</p> <p>9 presentations in 2011 to banks trying to raise</p> <p>10 money.</p> <p>11 Q. And did you tell any of those banks</p> <p>12 about this line of credit note to Lester Eber that</p> <p>13 was becoming due?</p> <p>14 A. I don't remember.</p> <p>15 Q. Is it fair to say you don't remember</p> <p>16 doing that?</p> <p>17 MR. RAMSEY: Speaking of Lester, I am</p> <p>18 sorry, advising the banks?</p> <p>19 MR. BROOK: Advising the banks of the</p> <p>20 line of credit.</p> <p>21 Q. You don't have any memory of doing</p> <p>22 that?</p> <p>23 A. I don't remember. I know we did try</p> <p>24 to talk to several different banks and.</p> <p>25 Q. Which banks?</p>	<p style="text-align: right;">Page 113</p> <p>1 W. Eber</p> <p>2 MR. RAMSEY: Form.</p> <p>3 A. Specifically in 2011?</p> <p>4 Q. At any point in time.</p> <p>5 A. We were trying to, you know, work on</p> <p>6 Connecticut and turning around that business as</p> <p>7 well, but you know, it's...</p> <p>8 Q. Did you expect that the Eber</p> <p>9 Connecticut business would generate over 1.5</p> <p>10 million dollars in free cash available to pay down</p> <p>11 this note by the end of December 2011?</p> <p>12 A. We were hoping to turn the company</p> <p>13 around. We put a lot of effort into trying to</p> <p>14 turn it around.</p> <p>15 Q. But did you think that 1.5 million</p> <p>16 dollar plus interest was remotely feasible at any</p> <p>17 point in time between October 2009 and December</p> <p>18 2011?</p> <p>19 A. Brian, I wasn't an expert in being a</p> <p>20 CFO. So I started off at Eber Brothers --</p> <p>21 MR. RAMSEY: Hold on. That's not the</p> <p>22 question. That's not the question. Just</p> <p>23 answer the question.</p> <p>24 Do you think 1.5 million dollars can</p> <p>25 be paid off?</p>

<p style="text-align: right;">Page 114</p> <p>1 W. Eber</p> <p>2 A. I don't know if I had the expectation</p> <p>3 because you know we were hoping to turn around</p> <p>4 Connecticut and make some money here. There were</p> <p>5 -- we had the economy go, you know, into a</p> <p>6 recession. I mean did I expect the economy going</p> <p>7 into a recession, you know. How did I expect that</p> <p>8 would affect the company. Did I expect to get</p> <p>9 duals on Yellow Tail. Did I expect to get duals</p> <p>10 on dug horn. There are a lot of moving parts</p> <p>11 here. So we were trying to turn around the</p> <p>12 company.</p> <p>13 Q. When was the dualling by Yellow Tail?</p> <p>14 When did that occur?</p> <p>15 A. I don't specifically remember. 2010,</p> <p>16 I don't know. Somewhere in -- I apologize. I am</p> <p>17 trying to think here.</p> <p>18 Q. Before 2011, is that fair to say?</p> <p>19 A. I think so.</p> <p>20 Q. When was the dualling by Duck Horn,</p> <p>21 also before 2011?</p> <p>22 A. I don't specifically remember.</p> <p>23 Q. Sometime in the time period of about</p> <p>24 2009 and 2010 there was a need to pay the Slocums</p> <p>25 additional compensation as part of the original</p>	<p style="text-align: right;">Page 116</p> <p>1 W. Eber</p> <p>2 Dean or Wally Crumb.</p> <p>3 Q. And again, because you aren't prepared</p> <p>4 to testify about the Slocum deal in 2005, am I</p> <p>5 correct in understanding that you cannot provide</p> <p>6 testimony about what the basis was for the payouts</p> <p>7 that were made to the Slocums in later years?</p> <p>8 A. No, I have no idea.</p> <p>9 Q. Did you want Eber Metro to default on</p> <p>10 the credit note?</p> <p>11 MR. RAMSEY: Form.</p> <p>12 A. No. I mean, we were -- this is -- no.</p> <p>13 Q. Why not?</p> <p>14 A. Why would I? No. I mean, we were in</p> <p>15 financial distress. So there was a lot of things</p> <p>16 going on. The economy was not doing well. There</p> <p>17 was a lot of financial distress going on within</p> <p>18 the companies. Southern had put us out of</p> <p>19 business and created a nightmare situation. So we</p> <p>20 were trying to get money. Trying to raise money.</p> <p>21 Trying to ask family members for money. Trying to</p> <p>22 find bankers to help us. Trying to get</p> <p>23 Connecticut to make money. It's very, very</p> <p>24 stressful. A lot of things going on.</p> <p>25 Q. So it is your testimony that you</p>
<p style="text-align: right;">Page 115</p> <p>1 W. Eber</p> <p>2 purchase agreement; is that correct?</p> <p>3 A. I have a vague recollection of that,</p> <p>4 yes.</p> <p>5 Q. What's your recollection as to the</p> <p>6 approximate timing of that? Was it before</p> <p>7 December 2011?</p> <p>8 A. I don't really remember. I wasn't</p> <p>9 involved in that original deal and then our CFO</p> <p>10 was working on that at the time. I just don't</p> <p>11 remember the timing of that.</p> <p>12 Q. So thereby RCO do you mean the CFO,</p> <p>13 I'm sorry, the CFO of Connecticut?</p> <p>14 A. Yes.</p> <p>15 Q. Who was that?</p> <p>16 A. What year are you talking about?</p> <p>17 Q. The year when the payouts to the</p> <p>18 Slocums occurred.</p> <p>19 A. I don't remember the exact date of the</p> <p>20 payouts.</p> <p>21 Do you have the document?</p> <p>22 Q. You just referred to a CFO who handled</p> <p>23 it.</p> <p>24 Which CFO were you referring to?</p> <p>25 A. Well, it would have either been Dave</p>	<p style="text-align: right;">Page 117</p> <p>1 W. Eber</p> <p>2 cannot think of any reason why you would have</p> <p>3 wanted Eber Metro to default on the line of credit</p> <p>4 note; is that correct?</p> <p>5 A. Yeah. No, yes.</p> <p>6 Q. What happened after Eber Metro</p> <p>7 defaulted on the line of credit note?</p> <p>8 A. I don't specifically remember. I</p> <p>9 mean, a lot of years ago.</p> <p>10 Q. Isn't it true that by mid December</p> <p>11 2011 it was your and Lester's intention to have</p> <p>12 Eber Metro default on the line of credit note?</p> <p>13 MR. RAMSEY: Form.</p> <p>14 A. What?</p> <p>15 Q. Isn't it true that by mid December</p> <p>16 2011 it was your and Lester's intention to have</p> <p>17 Eber Metro default on the line of credit note?</p> <p>18 MR. RAMSEY: Same objection.</p> <p>19 A. What I think was happening is that you</p> <p>20 know it was severe financial distress; right. You</p> <p>21 know, I wouldn't characterize it in those terms.</p> <p>22 The company, Connecticut was losing a lot of</p> <p>23 money. There were a lot of liabilities from</p> <p>24 Southern putting us out of business. It was very,</p> <p>25 very stressful, you know and --</p>

30 (Pages 114 - 117)



<p style="text-align: right;">Page 118</p> <p>1 W. Eber</p> <p>2 MR. RAMSEY: The question was: Was it</p> <p>3 yours and Lester's intention to have the</p> <p>4 line of credit, default on the line of</p> <p>5 credit.</p> <p>6 THE WITNESS: No.</p> <p>7 MR. RAMSEY: That was the question.</p> <p>8 BY MR. BROOK:</p> <p>9 Q. What was your understanding at that</p> <p>10 time of what the consequences were in the event of</p> <p>11 a default by Eber Metro on the line of credit?</p> <p>12 MR. RAMSEY: Form.</p> <p>13 A. Can you repeat the question?</p> <p>14 Q. Sure.</p> <p>15 In December 2011, what was your</p> <p>16 understanding of what the consequences were going</p> <p>17 to be in the event of a default by Eber Metro on</p> <p>18 the line of credit note?</p> <p>19 MR. RAMSEY: Form.</p> <p>20 A. I don't specifically remember what,</p> <p>21 you know.</p> <p>22 Q. Did you know that the line of credit</p> <p>23 note was subject to a security agreement?</p> <p>24 A. Yes. Yes.</p> <p>25 Q. What did that mean in terms of the</p>	<p style="text-align: right;">Page 120</p> <p>1 W. Eber</p> <p>2 (Plaintiffs' Exhibit 15, a security</p> <p>3 agreement dated as of February 26, 2010</p> <p>4 between Eber Brothers Wine and Liquor Corp.</p> <p>5 and Eber Metro in favor of Lester Eber</p> <p>6 bearing Bates numbers CNB 000055 through 68,</p> <p>7 marked for identification, as of this date.)</p> <p>8 Q. I am showing you now what has been</p> <p>9 marked as Plaintiffs' Exhibit 15. It is a</p> <p>10 security agreement dated as of February 26, 2010</p> <p>11 between Eber Brothers Wine and Liquor Corp. and</p> <p>12 Eber Metro in favor of Lester Eber bearing Bates</p> <p>13 numbers CNB 000055 through 67. Through, I am</p> <p>14 sorry, 68.</p> <p>15 Do you recognize this as the security</p> <p>16 agreement we were talking about a moment ago?</p> <p>17 A. It says security agreement at the top</p> <p>18 of it.</p> <p>19 Q. So is that a yes?</p> <p>20 A. Is what a yes?</p> <p>21 Q. This is the security agreement that</p> <p>22 gave Lester secured or secured Lester's loans to</p> <p>23 the company with the assets of Eber Metro and Eber</p> <p>24 Brothers Wine and Liquor?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 119</p> <p>1 W. Eber</p> <p>2 consequences of the default, potential</p> <p>3 consequences?</p> <p>4 MR. RAMSEY: Form.</p> <p>5 A. These are legal questions. Lester</p> <p>6 loaned --</p> <p>7 Q. I am only asking for your</p> <p>8 understanding at the time.</p> <p>9 A. He loaned in money and had a secured</p> <p>10 interest in Metro and the stock of Metro.</p> <p>11 Q. He also had a security interest in</p> <p>12 Metro's membership units in Eber Connecticut;</p> <p>13 correct?</p> <p>14 A. I believe so. I don't know all the</p> <p>15 legal terms here.</p> <p>16 Q. And who on behalf of Eber Metro</p> <p>17 authorized the execution of the security agreement</p> <p>18 with Lester Eber?</p> <p>19 A. I am not looking at it right now.</p> <p>20 Do you have a copy? I just don't</p> <p>21 remember. I just don't remember. This is from --</p> <p>22 when --</p> <p>23 MR. RAMSEY: Let him show it to you.</p> <p>24 MR. BROOK: We will mark this as</p> <p>25 Plaintiffs' Exhibit 15.</p>	<p style="text-align: right;">Page 121</p> <p>1 W. Eber</p> <p>2 Q. And if you turn to page 13, that's</p> <p>3 your signature on behalf of both entities;</p> <p>4 correct?</p> <p>5 A. Yeah.</p> <p>6 Q. So why was the security agreement</p> <p>7 entered into?</p> <p>8 MR. RAMSEY: Form.</p> <p>9 MR. BROOK: Basis?</p> <p>10 MR. RAMSEY: You are asking for a</p> <p>11 legal.</p> <p>12 A. Yeah, it is a legal.</p> <p>13 MR. BROOK: I am asking.</p> <p>14 MR. RAMSEY: If you want to ask her</p> <p>15 understanding that's fine. My form</p> <p>16 objection is that it is soliciting a legal</p> <p>17 opinion.</p> <p>18 MR. BROOK: I understand.</p> <p>19 BY MR. BROOK:</p> <p>20 Q. Why did Eber Metro and Eber Wine and</p> <p>21 Liquor sign the security agreement?</p> <p>22 A. Advised by, you know I mean these were</p> <p>23 all disclosed to our, you know, to Mike and I am</p> <p>24 sure I discussed this with Mike, our attorney, and</p> <p>25 I believe Harris Beach put this document together.</p>

<p style="text-align: right;">Page 122</p> <p>1 W. Eber</p> <p>2 MR. RAMSEY: Do you have an</p> <p>3 understanding of the purpose of the</p> <p>4 agreement, you personally? That's what the</p> <p>5 question is.</p> <p>6 MR. BROOK: Actually, my question is</p> <p>7 why they signed it.</p> <p>8 MR. RAMSEY: Well.</p> <p>9 A. Secured -- I don't remember all the</p> <p>10 details around it, but it gave us a secured</p> <p>11 interest.</p> <p>12 Q. What did Eber Metro get out of signing</p> <p>13 the security agreement?</p> <p>14 MR. RAMSEY: Form.</p> <p>15 Q. What was the benefit to Eber Metro as</p> <p>16 a result of signing the security agreement?</p> <p>17 A. I don't remember. It's been a while.</p> <p>18 I have to read through all the documents.</p> <p>19 I thought we discussed this at like</p> <p>20 with Mike. I discussed it with Mike.</p> <p>21 Q. Gumaer?</p> <p>22 A. Gumaer, yeah.</p> <p>23 Q. You discussed it with Glenn Sturm as</p> <p>24 well; correct?</p> <p>25 A. I may have.</p>	<p style="text-align: right;">Page 124</p> <p>1 W. Eber</p> <p>2 Exhibit 13?</p> <p>3 MR. RAMSEY: Form. You are asking for</p> <p>4 a legal opinion here.</p> <p>5 MR. BROOK: She offered one.</p> <p>6 MR. RAMSEY: Form.</p> <p>7 If you understand you can answer. My</p> <p>8 objection is to.</p> <p>9 Go ahead.</p> <p>10 A. This is on advice of counsel.</p> <p>11 Q. This was signed on advice of counsel,</p> <p>12 you are saying the security agreement was signed</p> <p>13 on the advice of counsel; is that right?</p> <p>14 A. Yes, I believe so. I don't remember</p> <p>15 all the details on the security agreement.</p> <p>16 Q. To the best of your recollection,</p> <p>17 which counsel are you referring to?</p> <p>18 A. Well, we spoke with Mike Gumaer.</p> <p>19 Q. And that's the only name that you can</p> <p>20 state right now?</p> <p>21 A. Well.</p> <p>22 Q. The person who is no longer around --</p> <p>23 A. I believe Harris Beach put together</p> <p>24 the document. I don't remember all the details.</p> <p>25 Q. And putting aside the document and</p>
<p style="text-align: right;">Page 123</p> <p>1 W. Eber</p> <p>2 Q. Glenn Sturm was retained at some point</p> <p>3 prior to February 26, 2010; is that right?</p> <p>4 A. I don't remember the exact date. But</p> <p>5 we discussed all of these documents.</p> <p>6 MR. RAMSEY: Just wait for a question.</p> <p>7 Q. You are talking about all the exhibits</p> <p>8 that you looked at today you are saying you</p> <p>9 discussed with somebody?</p> <p>10 A. No. I am saying I believe the line of</p> <p>11 credit note and the security agreement.</p> <p>12 Q. So as you sit here today you can't</p> <p>13 think of any reason why Eber Metro agreed to sign</p> <p>14 the security agreement; is that correct?</p> <p>15 MR. RAMSEY: Form.</p> <p>16 A. We needed the money. I mean, it was</p> <p>17 you know.</p> <p>18 Q. What money did the company get as a</p> <p>19 result of signing the security agreement in</p> <p>20 February 2010?</p> <p>21 MR. RAMSEY: Form.</p> <p>22 A. I think Lester was advancing money</p> <p>23 into the company at that time.</p> <p>24 Q. Wasn't he already obligated to do so</p> <p>25 based on the October 2009 line of credit note</p>	<p style="text-align: right;">Page 125</p> <p>1 W. Eber</p> <p>2 specifically what's in it, you said that the</p> <p>3 reason that you signed it was also because you</p> <p>4 needed the money from Lester; is that right?</p> <p>5 A. He was providing money, to loan in</p> <p>6 money into the companies. Yes, he was.</p> <p>7 Q. Did anyone tell you that if this</p> <p>8 security agreement was not signed, then Lester</p> <p>9 would not have to continue to provide money to the</p> <p>10 company under the line of credit note?</p> <p>11 MR. RAMSEY: Form.</p> <p>12 As long as that's not from counsel</p> <p>13 imparting legal advice, with that caveat go</p> <p>14 ahead and answer the question.</p> <p>15 A. Say that again.</p> <p>16 MR. RAMSEY: Brian asked you if anyone</p> <p>17 told you anything. If someone told you</p> <p>18 something that wasn't from your attorneys.</p> <p>19 If it was from your attorneys that's</p> <p>20 protected.</p> <p>21 MR. BROOK: I will withdraw the</p> <p>22 question.</p> <p>23 BY MR. BROOK:</p> <p>24 Q. Was it your understanding at or about</p> <p>25 the time you signed the security agreement that</p>



<p style="text-align: right;">Page 126</p> <p>1 W. Eber</p> <p>2 unless you signed it Lester would not loan anymore</p> <p>3 money to Eber Brothers Wine and Liquor or Eber</p> <p>4 Metro?</p> <p>5 MR. RAMSEY: Objection to form.</p> <p>6 You can answer.</p> <p>7 A. I don't remember. I remember discus</p> <p>8 -- this did come up I believe -- I don't remember</p> <p>9 all the details around it. I really don't</p> <p>10 remember all the details around it.</p> <p>11 MR. BROOK: We will go to another</p> <p>12 exhibit. Make this one Exhibit 16.</p> <p>13 (Plaintiffs' Exhibit 16, a copy of a</p> <p>14 line of credit note, marked for</p> <p>15 identification, as of this date.)</p> <p>16 Q. I am showing you what has been marked</p> <p>17 as Exhibit 16 and see that it is a copy of a line</p> <p>18 of credit note. It appears to be substantially</p> <p>19 similar to the one that we saw in Exhibit 13</p> <p>20 except there seems to be possibly some more</p> <p>21 written or maybe it is just a different font size.</p> <p>22 It is more pages and if you note, what's the date</p> <p>23 on this one, on the first page? Can you see that?</p> <p>24 A. February 26, 2010.</p> <p>25 Q. So now this line of credit note which</p>	<p style="text-align: right;">Page 128</p> <p>1 W. Eber</p> <p>2 A. Well, they are different date. I mean</p> <p>3 this -- I don't remember. I mean I don't. I</p> <p>4 don't remember.</p> <p>5 Q. So you don't remember but can you</p> <p>6 think of any reason why you might have? I am</p> <p>7 asking you to make a reasoned, your best reasoned</p> <p>8 speculation about why you did this.</p> <p>9 MR. RAMSEY: Form.</p> <p>10 If you've got a reasonable assumption</p> <p>11 that's one thing, but don't guess.</p> <p>12 A. I have no idea. I don't know.</p> <p>13 Q. Actually, I am going to ask you to</p> <p>14 guess. Can you even --</p> <p>15 A. No.</p> <p>16 MR. RAMSEY: Do not guess. She is not</p> <p>17 guessing.</p> <p>18 A. I don't know.</p> <p>19 MR. BROOK: You are allowed to state</p> <p>20 your objection to form. It may not be</p> <p>21 admissible but I am allowed to ask the</p> <p>22 question for her to guess.</p> <p>23 MR. RAMSEY: She is not going to</p> <p>24 guess. We are not guessing.</p> <p>25 A. There were --</p>
<p style="text-align: right;">Page 127</p> <p>1 W. Eber</p> <p>2 has Bates numbers from CNB 000040 through 43,</p> <p>3 meaning it was produced by Canandaigua National</p> <p>4 Bank, has the same date as the security agreement</p> <p>5 that we were just looking at Exhibit 15; correct?</p> <p>6 A. Okay.</p> <p>7 Q. Do you know why this document Exhibit</p> <p>8 16 with a new date of February 26, 2010 was</p> <p>9 prepared?</p> <p>10 A. No.</p> <p>11 Q. Is it your signature on the last page?</p> <p>12 A. I think so.</p> <p>13 Q. Let's compare the signatures on</p> <p>14 Exhibits 13 and 16. They are a little different.</p> <p>15 I want you to make sure you take a look and if one</p> <p>16 of them is not you to please say so.</p> <p>17 A. No. I think they are mine. I just</p> <p>18 signed this one, the one dated February 26, 2010,</p> <p>19 Wendy and the other one I signed W.</p> <p>20 Q. So as you sit here today, can you</p> <p>21 think of any reason whether you remember or not,</p> <p>22 can you think of any reason why you might have</p> <p>23 signed essentially the same line of credit note</p> <p>24 twice with two different dates?</p> <p>25 MR. RAMSEY: Form.</p>	<p style="text-align: right;">Page 129</p> <p>1 W. Eber</p> <p>2 MR. RAMSEY: Wait for a question.</p> <p>3 A. Okay.</p> <p>4 Q. Did you just think of something that</p> <p>5 might explain it?</p> <p>6 A. No, no. There is a lot of documents</p> <p>7 involved here. You know nine years ago, 11 years</p> <p>8 ago I just don't remember. I mean it is a lot of</p> <p>9 years ago.</p> <p>10 Q. Did you sign Exhibit 16 on the advice</p> <p>11 of counsel?</p> <p>12 MR. RAMSEY: Form.</p> <p>13 A. I believe so, yes. I spoke to Mike on</p> <p>14 all these documents.</p> <p>15 Q. And do you remember speaking to anyone</p> <p>16 else other than the person who is unfortunately</p> <p>17 not with us to confirm or deny what you are</p> <p>18 saying?</p> <p>19 MR. RAMSEY: Form.</p> <p>20 A. I may have. I don't remember right</p> <p>21 now. I believe Harris Beach did these documents.</p> <p>22 So I may have spoken to Harris Beach, but I just</p> <p>23 -- nine years ago I don't. My memory is not that</p> <p>24 good.</p> <p>25 Q. Do you know what a UCC financing</p>

<p style="text-align: right;">Page 130</p> <p>1 W. Eber</p> <p>2 statement is?</p> <p>3 A. It is something that's filed?</p> <p>4 Q. It is your understanding it is</p> <p>5 something filed with the state?</p> <p>6 A. With the state, yeah.</p> <p>7 Q. Didn't Glenn Sturm file the UCC</p> <p>8 financing statement after execution of the</p> <p>9 security agreement Exhibit 15?</p> <p>10 A. I don't know. I mean I don't</p> <p>11 remember, I don't.</p> <p>12 Q. Would it be fair to infer that</p> <p>13 whichever lawyer or law firm was involved in</p> <p>14 filing the UCC financing statement in connection</p> <p>15 with the security agreement, was likely also the</p> <p>16 lawyer that advised you to sign the security</p> <p>17 agreement?</p> <p>18 MR. RAMSEY: Form.</p> <p>19 If you know.</p> <p>20 THE WITNESS: If I know what?</p> <p>21 MR. RAMSEY: If you know you can</p> <p>22 answer the question.</p> <p>23 A. I don't know.</p> <p>24 Q. You don't know if that would be a</p> <p>25 reasonable inference under the circumstances?</p>	<p style="text-align: right;">Page 132</p> <p>1 W. Eber</p> <p>2 A. Yes.</p> <p>3 Q. It is also signed by Lester Eber?</p> <p>4 A. Yes.</p> <p>5 Q. Do you recall that in approximately</p> <p>6 February 2011 Eber Metro assumed all of the debt</p> <p>7 that Eber Brothers Wine and Liquor Corp. at that</p> <p>8 time had owed to Lester Eber?</p> <p>9 A. Vaguely.</p> <p>10 Q. Why is it such a vague recollection?</p> <p>11 A. It is like eight years ago. I just</p> <p>12 don't remember. I don't have these documents</p> <p>13 memorized. I haven't really looked at them in</p> <p>14 many, many years. So it's just kind of this.</p> <p>15 Q. How many lawsuits have been filed</p> <p>16 arising out of this document and related documents</p> <p>17 that ultimately led to Alexbay acquiring Eber</p> <p>18 Metro?</p> <p>19 A. Well, there is this one.</p> <p>20 Q. And there have been two others too;</p> <p>21 correct, at least?</p> <p>22 A. I don't know.</p> <p>23 Q. Harris Beach sued over this</p> <p>24 transaction; right? It claimed it was a</p> <p>25 fraudulent conveyance?</p>
<p style="text-align: right;">Page 131</p> <p>1 W. Eber</p> <p>2 MR. RAMSEY: Same objection.</p> <p>3 MR. BROOK: Let's go to Exhibit 17.</p> <p>4 (Plaintiffs' Exhibit 17, Debt</p> <p>5 Assumption Agreement dated as of February</p> <p>6 11, 2011 between Eber Brothers Wine and</p> <p>7 Liquor and Eber Metro and Lester Eber Bates</p> <p>8 number CNB 000072 through 74, marked for</p> <p>9 identification, as of this date.)</p> <p>10 Q. I am showing you what has been marked</p> <p>11 as Exhibit 17 called Debt Assumption Agreement</p> <p>12 dated as of February 11, 2011 between Eber</p> <p>13 Brothers Wine and Liquor and Eber Metro and Lester</p> <p>14 Eber. It is Bates number CNB 000072 through 74.</p> <p>15 Do you recognize this document?</p> <p>16 A. Dated March 13, 2006.</p> <p>17 What's the date on this?</p> <p>18 Q. I am sorry.</p> <p>19 Did I hand you the wrong document?</p> <p>20 MR. RAMSEY: No.</p> <p>21 MR. CALIHAN: That's what it says.</p> <p>22 A. That assumption agreement is made as</p> <p>23 of the 11th day of February 2011.</p> <p>24 Q. If you turn to the third page, do you</p> <p>25 recognize your signature there twice?</p>	<p style="text-align: right;">Page 133</p> <p>1 W. Eber</p> <p>2 A. No.</p> <p>3 Q. Harris Beach didn't sue anyone over</p> <p>4 this or --</p> <p>5 A. My understanding is they sued over</p> <p>6 fees.</p> <p>7 Q. So --</p> <p>8 A. Fees, unpaid fees.</p> <p>9 Q. So you don't have an understanding</p> <p>10 that Harris Beach sued various Eber entities</p> <p>11 including Eber Metro, Eber Connecticut, Alexbay,</p> <p>12 Lester Eber alleging that the transfer of Eber</p> <p>13 Metro to Alexbay was a fraudulent conveyance?</p> <p>14 MR. RAMSEY: Form.</p> <p>15 A. Well, first they sued I believe over</p> <p>16 fees and then they may have sued based on what you</p> <p>17 just stated.</p> <p>18 Q. So as you sit here --</p> <p>19 A. So I just haven't looked at these</p> <p>20 documents in a very long time.</p> <p>21 Q. When is the last time that you recall</p> <p>22 looking at these documents?</p> <p>23 A. When do I recall looking at these</p> <p>24 documents? I don't remember. I mean it's been a</p> <p>25 long time. I just don't -- I just haven't looked</p>

<p style="text-align: right;">Page 134</p> <p>1 W. Eber</p> <p>2 at them. I am running a company. You know, I</p> <p>3 have got -- you know.</p> <p>4 MR. RAMSEY: You answered the</p> <p>5 question.</p> <p>6 A. It's been a very long time. I don't</p> <p>7 remember the last time I looked at these</p> <p>8 documents. It's been a very long time since I</p> <p>9 looked at these documents.</p> <p>10 Q. So, and it is your testimony today</p> <p>11 under oath that you are not sure whether or not</p> <p>12 Harris Beach alleged that a fraudulent conveyance</p> <p>13 occurred with the transfer to Alexbay; is that</p> <p>14 right?</p> <p>15 MR. RAMSEY: Form.</p> <p>16 A. What?</p> <p>17 Q. It is your testimony today under oath</p> <p>18 that you are not sure whether Harris Beach alleged</p> <p>19 that the transfer of Eber Metro to Alexbay was a</p> <p>20 fraudulent conveyance?</p> <p>21 MR. RAMSEY: Form.</p> <p>22 A. I didn't say that. What I said was</p> <p>23 they originally sued for fees, legal fees and then</p> <p>24 they brought a suit later for the fraudulent</p> <p>25 conveyance was I believe at a later date they</p>	<p style="text-align: right;">Page 136</p> <p>1 W. Eber</p> <p>2 MR. RAMSEY: Form.</p> <p>3 If you can answer.</p> <p>4 A. I am not an ERISA lawyer but that's</p> <p>5 not my understanding, no. But ERISA laws --</p> <p>6 MR. RAMSEY: You answered the</p> <p>7 question.</p> <p>8 Q. So what was your understanding of the</p> <p>9 basis for PBGC's claims?</p> <p>10 A. Claims, what do you mean? The</p> <p>11 termination liability? What do you mean?</p> <p>12 Q. Didn't PBGC end up suing Eber</p> <p>13 Connecticut and Eber Metro and Alexbay?</p> <p>14 A. I am not sure if they sued all of</p> <p>15 those entities. I don't remember if it was all</p> <p>16 those entities that they sued. It was around</p> <p>17 other issues I believe, but I am not an ERISA</p> <p>18 lawyer. These are legal questions, but it wasn't</p> <p>19 around fraudulent conveyance.</p> <p>20 Q. The lawsuit --</p> <p>21 A. To my understanding.</p> <p>22 Q. The lawsuit brought by PBGC was</p> <p>23 ultimately settled out of court; correct?</p> <p>24 A. What do you mean by out of court?</p> <p>25 Q. It was settled between the parties;</p>
<p style="text-align: right;">Page 135</p> <p>1 W. Eber</p> <p>2 brought that, but originally was for legal fees</p> <p>3 that were not paid.</p> <p>4 Q. And didn't PBGC, Pension Benefit</p> <p>5 Guaranty Corporation, also allege there had been a</p> <p>6 fraudulent conveyance of Eber Metro to Alexbay?</p> <p>7 A. No.</p> <p>8 MR. RAMSEY: Form.</p> <p>9 Q. What were their allegations when they</p> <p>10 filed suit in Federal Court?</p> <p>11 MR. RAMSEY: Form.</p> <p>12 A. These are legal questions that they</p> <p>13 did not sue for fraudulent conveyance, no. I</p> <p>14 mean --</p> <p>15 MR. RAMSEY: Whatever your</p> <p>16 understanding is.</p> <p>17 A. That's my understanding as a</p> <p>18 non-lawyer that they did not sue for fraudulent</p> <p>19 conveyance.</p> <p>20 Q. So what I am saying is well, putting</p> <p>21 aside fraudulent conveyance, did they question the</p> <p>22 transfer of Eber Metro to Alexbay?</p> <p>23 MR. RAMSEY: Form.</p> <p>24 Q. Did they challenge it, say that it was</p> <p>25 improper in any way?</p>	<p style="text-align: right;">Page 137</p> <p>1 W. Eber</p> <p>2 correct?</p> <p>3 A. There was a settlement, yes.</p> <p>4 Q. And you were one of the people who</p> <p>5 authorized that settlement when it occurred;</p> <p>6 correct?</p> <p>7 A. Yes.</p> <p>8 Q. So you had some understanding of what</p> <p>9 the lawsuit was about if you authorized the</p> <p>10 settlement, didn't you?</p> <p>11 MR. RAMSEY: Form.</p> <p>12 A. Say that again.</p> <p>13 Q. It is not your testimony that you</p> <p>14 didn't understand what the case was about when you</p> <p>15 authorized the settlement for seven figures, did</p> <p>16 you?</p> <p>17 MR. RAMSEY: Form.</p> <p>18 A. No. I don't understand what you are</p> <p>19 saying.</p> <p>20 Q. You authorized the settlement with</p> <p>21 PBGC; correct?</p> <p>22 A. Yes.</p> <p>23 Q. And that settlement involved paying</p> <p>24 PBGC two million dollars; correct?</p> <p>25 A. Yes, and --</p>

<p style="text-align: right;">Page 138</p> <p>1 W. Eber</p> <p>2 Q. And it involved Lester Eber giving up</p> <p>3 his pension benefits worth approximately 1.4</p> <p>4 million; correct?</p> <p>5 A. Yes.</p> <p>6 Q. 3.4 million dollars in benefit</p> <p>7 transferred from either your father or companies</p> <p>8 in which you are an executive to PBGC; correct?</p> <p>9 A. Yes.</p> <p>10 Q. What was your understanding of what</p> <p>11 you were authorizing that 3.4 million transfer for</p> <p>12 in terms of what was PBGC saying was the basis for</p> <p>13 it to get that money?</p> <p>14 MR. RAMSEY: Form.</p> <p>15 A. It's a termination liability that, for</p> <p>16 the pension plan. There was a -- when -- let's</p> <p>17 step back here.</p> <p>18 When Eber Brothers was put out of</p> <p>19 business by Southern there was, you know, a lot of</p> <p>20 liabilities and part of the liabilities was a</p> <p>21 pension plan liability. Now it is very</p> <p>22 complicated. I am not an ERISA lawyer, so I don't</p> <p>23 know all of the legal ERISA laws because it is a</p> <p>24 very specific area of the law, but they did not</p> <p>25 sue us for fraudulent conveyance.</p>	<p style="text-align: right;">Page 140</p> <p>1 W. Eber</p> <p>2 PBGC?</p> <p>3 A. Who paid the 2 million dollars to</p> <p>4 PBGC?</p> <p>5 Q. Correct.</p> <p>6 Which entity?</p> <p>7 A. I think Metro paid a part of it. I</p> <p>8 think Metro paid it. You know, I don't quite</p> <p>9 remember. I don't want to go -- there are</p> <p>10 documents on it. So I would like to refer back to</p> <p>11 the documents to know who exactly paid it.</p> <p>12 RQ MR. BROOK: I am not sure we have seen</p> <p>13 those documents for Metro. We have like a</p> <p>14 stop at 2012 or something. I am going to</p> <p>15 put in the request that whatever documents</p> <p>16 can be reasonably found that relate to</p> <p>17 payment of settlement proceeds to PBGC be</p> <p>18 produced.</p> <p>19 MR. RAMSEY: On that note can we take</p> <p>20 five minutes?</p> <p>21 MR. BROOK: Sure.</p> <p>22 THE VIDEOGRAPHER: This marks the end</p> <p>23 of media unit number three of the videotaped</p> <p>24 deposition of Wendy Eber. We are going off</p> <p>25 the record. The time is 2:20.</p>
<p style="text-align: right;">Page 139</p> <p>1 W. Eber</p> <p>2 Q. It was about when the termination date</p> <p>3 for the plan would be set up; is that correct?</p> <p>4 MR. RAMSEY: Form.</p> <p>5 A. You know I believe so but you know, I</p> <p>6 am not a lawyer.</p> <p>7 Q. Which corporate entity was it that had</p> <p>8 the pension plan that was in question that was the</p> <p>9 basis for liability to PBGC?</p> <p>10 A. Which?</p> <p>11 Q. Which corporate entity among the Eber</p> <p>12 entities?</p> <p>13 A. Well, it's -- I am not an ERISA</p> <p>14 lawyer. You got to ask the -- these are ERISA</p> <p>15 questions.</p> <p>16 Q. My question is which -- let's step</p> <p>17 back.</p> <p>18 Did Eber Metro have a pension plan?</p> <p>19 A. Eber Metro had employees who did have</p> <p>20 a pension, who were members of the pension plan.</p> <p>21 Q. And the pension plan was maintained at</p> <p>22 the higher level for Eber Brothers Wine and Liquor</p> <p>23 Corp.; correct?</p> <p>24 A. I believe so, yes. Yes.</p> <p>25 Q. Now who paid the 2 million dollars to</p>	<p style="text-align: right;">Page 141</p> <p>1 W. Eber</p> <p>2 (Recess taken.)</p> <p>3 THE VIDEOGRAPHER: This marks the</p> <p>4 beginning of media unit number four in the</p> <p>5 videotaped deposition of Wendy Eber. We are</p> <p>6 going on the record. The time is 2:31.</p> <p>7 BY MR. BROOK:</p> <p>8 Q. So still looking at Exhibit 17, the</p> <p>9 debt assumption agreement.</p> <p>10 Do you have any recollection at all</p> <p>11 about why you executed this agreement?</p> <p>12 A. I don't. I don't remember the details</p> <p>13 around it. You know, I do know we needed, you</p> <p>14 know money. We were in need of money.</p> <p>15 Q. Just because that's now on the</p> <p>16 transcript in your answer I have to ask you, how</p> <p>17 did this debt assumption agreement relate to or</p> <p>18 how did this signing the debt assumption agreement</p> <p>19 help with the situation where the company needed</p> <p>20 money?</p> <p>21 A. I don't remember all the details</p> <p>22 Brian. I don't remember. I haven't looked at</p> <p>23 these documents in years.</p> <p>24 Q. You said, you indicated this agreement</p> <p>25 was signed because the company needed money, but</p>

<p style="text-align: right;">Page 142</p> <p>1 W. Eber</p> <p>2 there was nothing in here that the company is</p> <p>3 getting any money as a result of signing this;</p> <p>4 correct?</p> <p>5 A. I don't remember.</p> <p>6 MR. RAMSEY: Form.</p> <p>7 Q. Pursuant to this agreement debt that</p> <p>8 belonged to Eber Brothers Wine and Liquor Corp. is</p> <p>9 being assigned to and assumed by Eber Metro;</p> <p>10 correct?</p> <p>11 MR. RAMSEY: Form.</p> <p>12 A. Can you repeat that?</p> <p>13 MR. BROOK: Can you please read back</p> <p>14 the question?</p> <p>15 (Record read.)</p> <p>16 A. Read it again. Sorry.</p> <p>17 (Record read.)</p> <p>18 A. Correct. I believe that we talked to</p> <p>19 Mike about all these documents and he was advising</p> <p>20 us.</p> <p>21 Q. So Mike Gumaer?</p> <p>22 A. Yeah.</p> <p>23 Q. So did Mike Gumaer draft this</p> <p>24 agreement?</p> <p>25 A. I don't remember. I don't believe he</p>	<p style="text-align: right;">Page 144</p> <p>1 W. Eber</p> <p>2 to a moment ago?</p> <p>3 A. It may have been. I don't know.</p> <p>4 Q. Please turn to the second to last</p> <p>5 page.</p> <p>6 Is that your signature there twice on</p> <p>7 that page?</p> <p>8 A. Yes.</p> <p>9 Q. Do you recall discussing this Exhibit</p> <p>10 18 with anyone at or around the time that you</p> <p>11 signed it?</p> <p>12 A. I don't remember. I am sure I</p> <p>13 discussed it. I just don't remember.</p> <p>14 MR. BROOK: Let's mark this next one</p> <p>15 as 19.</p> <p>16 (Plaintiffs' Exhibit 19, board</p> <p>17 meeting minutes bearing Bates number EB</p> <p>18 00016953, marked for identification, as of</p> <p>19 this date.)</p> <p>20 Q. I am showing you what has been marked</p> <p>21 as Plaintiffs' Exhibit 19. It is board meeting</p> <p>22 minutes bearing Bates number EB 00016953.</p> <p>23 Do you recognize this document?</p> <p>24 A. Can I have a minute to read it?</p> <p>25 Q. Yes. Let me know when you are done.</p>
<p style="text-align: right;">Page 143</p> <p>1 W. Eber</p> <p>2 drafted it. I don't remember.</p> <p>3 Q. Who do you believe drafted this</p> <p>4 agreement?</p> <p>5 A. I don't remember.</p> <p>6 Q. Do you recall discussing this</p> <p>7 agreement with anyone besides Mike Gumaer?</p> <p>8 A. I may have. I don't remember. I may</p> <p>9 have spoken to Glenn. I don't remember any</p> <p>10 details. It's 2011.</p> <p>11 Q. And do you recall executing an amended</p> <p>12 and restated security agreement at or about the</p> <p>13 same time you signed this debt assumption</p> <p>14 agreement?</p> <p>15 A. Vaguely.</p> <p>16 MR. BROOK: I don't have questions</p> <p>17 about it, but let's just mark it anyway to</p> <p>18 cover the bases. Plaintiffs' 18.</p> <p>19 (Plaintiffs' Exhibit 18, the amended</p> <p>20 and restated security agreement with Bates</p> <p>21 numbers EB 00018379 through 392, marked for</p> <p>22 identification, as of this date.)</p> <p>23 Q. So is this the amended and restated</p> <p>24 security agreement with Bates numbers EB 00018379</p> <p>25 through 392 the same one that you were referring</p>	<p style="text-align: right;">Page 145</p> <p>1 W. Eber</p> <p>2 Do you still need more time?</p> <p>3 A. Yes.</p> <p>4 Okay.</p> <p>5 Q. Do you recognize this document?</p> <p>6 A. Yes.</p> <p>7 Q. What is it?</p> <p>8 A. The minutes from the meeting of the</p> <p>9 board of Eber Brothers Wine and Liquor Metro Inc.</p> <p>10 Q. And did you prepare these?</p> <p>11 A. Yes.</p> <p>12 Q. When did you prepare these minutes?</p> <p>13 A. You know, after the meeting at some</p> <p>14 point. I don't remember when.</p> <p>15 Q. Did you take notes during the meeting?</p> <p>16 A. I may have, yeah.</p> <p>17 Q. Was it your typical practice as</p> <p>18 secretary of the board of Eber Metro to take notes</p> <p>19 at board meetings?</p> <p>20 A. Yeah, I did take note.</p> <p>21 MR. RAMSEY: Hold on one second. He</p> <p>22 said he lost the connection.</p> <p>23 MR. BROOK: Just since some of this</p> <p>24 ended up on the record, I will note that the</p> <p>25 he be referred to is John Herbert. He is</p>



<p style="text-align: right;">Page 146</p> <p>1 W. Eber</p> <p>2 now back on the line.</p> <p>3 BY MR. BROOK:</p> <p>4 Q. So Miss Eber, do you now recall</p> <p>5 specifically taking notes during the August 18,</p> <p>6 2011 board meeting? I wasn't sure about your</p> <p>7 answer.</p> <p>8 A. I don't -- you know I may have taken</p> <p>9 notes, yes. I don't remember.</p> <p>10 Q. Approximately, how long after the</p> <p>11 board meeting in August 2011 did you prepare these</p> <p>12 minutes? Was it the next day?</p> <p>13 A. This was eight years ago.</p> <p>14 MR. RAMSEY: To the best of your</p> <p>15 recollection.</p> <p>16 A. I just don't remember. At some point</p> <p>17 after the meeting.</p> <p>18 Q. Did you have a particular habit,</p> <p>19 routine or practice when you were secretary of</p> <p>20 either the board of Eber Metro or Eber Brothers</p> <p>21 Wine and Liquor Corp. with respect to the time you</p> <p>22 prepared minutes after a board meeting?</p> <p>23 A. Sorry. Repeat that.</p> <p>24 Q. Did you have a particular habit,</p> <p>25 routine or practice for preparing board meeting</p>	<p style="text-align: right;">Page 148</p> <p>1 W. Eber</p> <p>2 Q. Why is that?</p> <p>3 A. We may have done these meetings</p> <p>4 altogether, like a trustees meeting and a board</p> <p>5 meeting. I don't know. Maybe I just didn't</p> <p>6 change the title. I don't remember.</p> <p>7 Q. What was your relationship at the time</p> <p>8 to the Allen Eber Trust?</p> <p>9 A. I believe I was a beneficiary.</p> <p>10 Q. And is that based on --</p> <p>11 A. Like not --</p> <p>12 Q. Go ahead.</p> <p>13 A. Not a named beneficiary but descendant</p> <p>14 or something.</p> <p>15 Q. A contingent one?</p> <p>16 A. It is a legal term.</p> <p>17 Q. I believe she is trying to say per</p> <p>18 stirpes. Sounds like a bad disease but it is just</p> <p>19 a Latin term.</p> <p>20 A. I believe I was, but I could be wrong.</p> <p>21 Q. And did you have, did the trustees</p> <p>22 retain you to provide any services to the trust?</p> <p>23 MR. CALIHAN: What was the question?</p> <p>24 (Record read.)</p> <p>25 MR. RAMSEY: Form to that question.</p>
<p style="text-align: right;">Page 147</p> <p>1 W. Eber</p> <p>2 minutes?</p> <p>3 A. No. I mean I did it.</p> <p>4 Q. And did you typically wait a couple of</p> <p>5 months before preparing the minutes?</p> <p>6 MR. RAMSEY: Form.</p> <p>7 A. I don't remember. It may have taken</p> <p>8 longer at some points. You know, I don't really</p> <p>9 remember.</p> <p>10 Q. Was there a procedure in place for</p> <p>11 approving board meeting minutes after you drafted</p> <p>12 them?</p> <p>13 A. I believe I sent them. I would send</p> <p>14 them to the people involved, the lawyers. I</p> <p>15 probably sent it to Mike and I may have had a --</p> <p>16 maybe Glenn looked at them. I don't remember.</p> <p>17 Q. Did you send them to Lester as well?</p> <p>18 A. Yeah. I may have sent them to Lester</p> <p>19 as well or may have given them to Lester.</p> <p>20 Q. Now although the title of this</p> <p>21 document Says Minutes From the Meeting of the</p> <p>22 Board Eber Brothers Wine and Liquor Metro Inc., do</p> <p>23 you see the second paragraph seems to talk about</p> <p>24 actions by the trustees of the Allen Eber Trust?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 149</p> <p>1 W. Eber</p> <p>2 A. What do you mean by retain?</p> <p>3 Q. Were you employed by the trust to do</p> <p>4 anything in connection with its administration?</p> <p>5 A. No.</p> <p>6 Q. Did any of the trustees ask you to</p> <p>7 help them in an unofficial capacity with the</p> <p>8 administration of the trust?</p> <p>9 A. Sorry. Repeat that.</p> <p>10 MR. BROOK: Could you read it back</p> <p>11 please?</p> <p>12 (Record read.)</p> <p>13 A. No.</p> <p>14 Q. Did you participate in meetings among</p> <p>15 the trustees?</p> <p>16 A. I may have been involved in some, but</p> <p>17 not all of them, no.</p> <p>18 Q. Returning to specifically Exhibit 19.</p> <p>19 So are these board meeting minutes</p> <p>20 accurate insofar as they indicate that the loans</p> <p>21 that had been made to Lester Eber, from Lester</p> <p>22 Eber to Eber Brothers Wine and Liquor Corp. and</p> <p>23 Eber Metro had not been reviewed by or approved by</p> <p>24 either company's board of directors prior to this</p> <p>25 board meeting?</p>

<p style="text-align: right;">Page 150</p> <p>1 W. Eber</p> <p>2 A. I don't remember. I haven't looked at</p> <p>3 many of these documents in a very long time. So I</p> <p>4 don't remember. I believe we spoke to Mike. We</p> <p>5 had meetings with Mike. I think he was aware that</p> <p>6 Lester was loaning money in to the company. I</p> <p>7 don't know if those, some of those meetings were</p> <p>8 documented or not.</p> <p>9 Q. Now a few moments ago you had an</p> <p>10 opportunity to thoroughly read this Exhibit 19;</p> <p>11 correct?</p> <p>12 A. Yeah.</p> <p>13 Q. When you did so, did you see anything</p> <p>14 that was stated in this document that you believed</p> <p>15 was incorrect?</p> <p>16 A. I didn't read it that closely, so I am</p> <p>17 not sure.</p> <p>18 Q. But you don't recall seeing anything</p> <p>19 that you noticed --</p> <p>20 MR. RAMSEY: Hold on.</p> <p>21 Do you need to read it again after the</p> <p>22 question?</p> <p>23 THE WITNESS: I would like a little</p> <p>24 time to reread it. I haven't read these</p> <p>25 things in a long time.</p>	<p style="text-align: right;">Page 152</p> <p>1 W. Eber</p> <p>2 Eber Connecticut from Eber Metro in or around the</p> <p>3 time period of 2011 or 2012?</p> <p>4 A. We did talk to some parties. I don't</p> <p>5 remember the specific date.</p> <p>6 Q. Which parties were spoken to?</p> <p>7 A. What were the time frame? From like</p> <p>8 what time periods because I really -- we did speak</p> <p>9 to some parties. I just don't specifically -- it</p> <p>10 is a lot of years ago. I don't remember the</p> <p>11 specific dates. I know we did speak to</p> <p>12 Maglioccos. I don't remember exactly when that</p> <p>13 was. I think there was a distributor in New</p> <p>14 Jersey. I don't remember exactly when that was.</p> <p>15 Q. So is it fair to say that you don't</p> <p>16 recall contacting any third parties for them to</p> <p>17 potentially buy Eber Connecticut during the time</p> <p>18 period when you were trying to find a way to have</p> <p>19 Eber Metro pay the Lester Eber line of credit?</p> <p>20 MR. RAMSEY: Form.</p> <p>21 A. I don't -- I mean I don't really know</p> <p>22 people in the industry to contact. So I wasn't</p> <p>23 contacting people.</p> <p>24 Q. And you didn't hire any third-party</p> <p>25 brokers or anything?</p>
<p style="text-align: right;">Page 151</p> <p>1 W. Eber</p> <p>2 MR. RAMSEY: Go ahead.</p> <p>3 MR. BROOK: I will withdraw that</p> <p>4 question.</p> <p>5 Q. And you are not going to be bound to</p> <p>6 it, but is it correct that when you read it</p> <p>7 nothing jumped out at you as incorrect that you</p> <p>8 read when you saw it before?</p> <p>9 MR. RAMSEY: Form.</p> <p>10 If you want to read it again take your</p> <p>11 time and read it.</p> <p>12 A. It is a little confusing. There are a</p> <p>13 lot of documents.</p> <p>14 MR. RAMSEY: Hold on.</p> <p>15 Do you need to reread it to answer</p> <p>16 that question?</p> <p>17 THE WITNESS: Yeah. I would like to</p> <p>18 take a couple of minutes to --</p> <p>19 MR. BROOK: I am going to withdraw the</p> <p>20 question because we don't have -- if that</p> <p>21 wasn't a close reading before I don't know</p> <p>22 how long the next one will take.</p> <p>23 A. I am a slow reader. I am sorry.</p> <p>24 Q. To your knowledge, were any third</p> <p>25 parties contacted about the possibility of buying</p>	<p style="text-align: right;">Page 153</p> <p>1 W. Eber</p> <p>2 A. I am just saying I don't really have a</p> <p>3 lot of contacts in the industry where I would know</p> <p>4 people to contact.</p> <p>5 Q. You were saying Lester is the one with</p> <p>6 the contacts?</p> <p>7 A. Lester had more contacts than I would</p> <p>8 have. I had more internal accounting jobs where I</p> <p>9 just didn't know a lot of the people who would be</p> <p>10 interested in purchasing. We did have a</p> <p>11 conversation I remember with the Maglioccos.</p> <p>12 Q. How did that conversation go?</p> <p>13 A. They were not interested.</p> <p>14 Q. Who are the Maglioccos?</p> <p>15 A. They own a distributor. They own a</p> <p>16 distributor in New York and they own one in</p> <p>17 Connecticut too.</p> <p>18 Q. What is their distributor that they</p> <p>19 own in Connecticut?</p> <p>20 A. It is called Broscum.</p> <p>21 Q. Did you speak with anyone from</p> <p>22 Eder-Goodman about potentially selling them the 79</p> <p>23 percent stake in Eber Connecticut that Eber Metro</p> <p>24 had as of 2011?</p> <p>25 A. No.</p>

<p style="text-align: right;">Page 154</p> <p>1 W. Eber</p> <p>2 Q. Why not?</p> <p>3 A. We were not performing well. I mean</p> <p>4 you know, I don't know. They weren't that happy</p> <p>5 with us. I don't know.</p> <p>6 MR. RAMSEY: Brian, just for</p> <p>7 clarification for the demarcation talk</p> <p>8 earlier, are you -- I know there is some</p> <p>9 blurring, but are you into Eber Connecticut?</p> <p>10 MR. BROOK: No, no. Talking about</p> <p>11 Eber Metro selling its shares and --</p> <p>12 MR. RAMSEY: We are still on the Metro</p> <p>13 30(b)(6)?</p> <p>14 MR. BROOK: Correct. I am not talking</p> <p>15 about Connecticut selling itself, so.</p> <p>16 BY MR. BROOK:</p> <p>17 Q. So why did you think that the</p> <p>18 Eder-Goodman folks were not happy with your</p> <p>19 management of Eber Connecticut?</p> <p>20 A. We lost a significant amount of money.</p> <p>21 A lot of money. Multi millions of dollars. I</p> <p>22 think it was in the, you know, like three, four,</p> <p>23 five, six million bucks.</p> <p>24 Q. And --</p> <p>25 A. I don't know.</p>	<p style="text-align: right;">Page 156</p> <p>1 W. Eber</p> <p>2 A. Correct.</p> <p>3 Q. And have you ever proposed to</p> <p>4 Eder-Goodman that there could be a merger between</p> <p>5 Eber Connecticut and Eder-Goodman?</p> <p>6 A. Have I ever proposed that to them?</p> <p>7 Q. Has Eber Metro ever proposed that to</p> <p>8 them?</p> <p>9 A. What do you mean by merger?</p> <p>10 Q. A combination of the two companies in</p> <p>11 some way, shape or form either through merger,</p> <p>12 through acquisition, through sale of substantially</p> <p>13 all of the assets or through partnership or a</p> <p>14 joint venture.</p> <p>15 A. Not through those terms, no. We</p> <p>16 talked about I think some joint warehousing.</p> <p>17 Q. When was that?</p> <p>18 A. I don't remember.</p> <p>19 Q. What was the response by them to the</p> <p>20 proposal for joint warehousing?</p> <p>21 A. It's complicated because they are two</p> <p>22 separate companies and their warehousing is not</p> <p>23 together either and there are some state, I think,</p> <p>24 liquor laws that prevent that. So it is kind of a</p> <p>25 legal.</p>
<p style="text-align: right;">Page 155</p> <p>1 W. Eber</p> <p>2 Q. Was Eder-Goodman ever asked to make</p> <p>3 additional capital contributions to Eber</p> <p>4 Connecticut as a result of that?</p> <p>5 A. I believe we did ask them. Lester</p> <p>6 loaned in some money into Connecticut because we</p> <p>7 couldn't pay our bills and I believe we asked them</p> <p>8 to participate with him and they declined is my</p> <p>9 recollection.</p> <p>10 Q. So now referring to preferred stock.</p> <p>11 I am sorry, PIK.</p> <p>12 Did you say pick PIK, P-I-K?</p> <p>13 A. No. Just like loan in working capital</p> <p>14 into the company.</p> <p>15 Q. And what was the response?</p> <p>16 A. No.</p> <p>17 Q. Was it more colorful than that? I am</p> <p>18 gauging off your facial reaction. If you can</p> <p>19 remember the exact words, please do so.</p> <p>20 A. These conversations are so long ago it</p> <p>21 is really hard for me to remember. We had lost</p> <p>22 millions of dollars and they were very concerned</p> <p>23 about that, those losses.</p> <p>24 Q. Eder-Goodman runs a distributor in The</p> <p>25 State of Connecticut itself; doesn't it?</p>	<p style="text-align: right;">Page 157</p> <p>1 W. Eber</p> <p>2 Q. Is it fair to say they did not agree</p> <p>3 to have joint warehousing?</p> <p>4 A. I don't think it was possible. I</p> <p>5 don't think it was possible.</p> <p>6 Q. So other than the joint warehousing</p> <p>7 proposal, just so the record is clear, you don't</p> <p>8 recall any discussions between Eber Metro and</p> <p>9 anyone from Eder-Goodman about a possible</p> <p>10 combination between the two companies?</p> <p>11 A. No. There was something, a discussion</p> <p>12 about sales for doing something with the sales</p> <p>13 force together, but that didn't go anywhere</p> <p>14 either.</p> <p>15 Q. Approximately, when was that</p> <p>16 discussion?</p> <p>17 A. I don't remember.</p> <p>18 Q. Was it within the last five years?</p> <p>19 A. Last five years like you are saying</p> <p>20 when?</p> <p>21 Q. On the more recent side of things</p> <p>22 versus the events that we are talking about in --</p> <p>23 A. No. I think it was before the last</p> <p>24 five years.</p> <p>25 Q. And how extensive were those</p>

<p style="text-align: right;">Page 158</p> <p>1 W. Eber</p> <p>2 discussions?</p> <p>3 A. I don't really remember. I don't</p> <p>4 really remember.</p> <p>5 Q. Is it fair to say that there was never</p> <p>6 any discussions between Eber Metro and anyone from</p> <p>7 Eder-Goodman about a combination where the end</p> <p>8 result would be a company joint venture</p> <p>9 partnership that did not involve you and Lester</p> <p>10 continuing in some management capacity?</p> <p>11 A. Say that again?</p> <p>12 Q. Is it fair to say that there was never</p> <p>13 a discussion between anyone from Eber Metro and</p> <p>14 anyone from Eder-Goodman about the possibility of</p> <p>15 a combination where you and Lester would no longer</p> <p>16 be involved in the management of whatever company</p> <p>17 resulted?</p> <p>18 A. Yeah, yes.</p> <p>19 Q. That's fair to say?</p> <p>20 A. Yes, I believe so, yes.</p> <p>21 Q. I am going to show you what was</p> <p>22 previously marked as Plaintiffs' Exhibit 8 at a</p> <p>23 previous deposition.</p> <p>24 I have a couple of extra copies if you</p> <p>25 guys need one.</p>	<p style="text-align: right;">Page 160</p> <p>1 W. Eber</p> <p>2 Q. Were you aware of its existence at</p> <p>3 that time?</p> <p>4 A. No.</p> <p>5 Q. Have you discussed this affidavit with</p> <p>6 Lester since you first became aware of it?</p> <p>7 MR. RAMSEY: Outside the presence of</p> <p>8 counsel.</p> <p>9 A. No. I talked about it with counsel.</p> <p>10 Q. What did you think of this affidavit</p> <p>11 when you first saw it?</p> <p>12 MR. RAMSEY: Form.</p> <p>13 A. I think it is an administrative error.</p> <p>14 I don't think this is accurate. It is a mistake.</p> <p>15 Q. Why do you say that?</p> <p>16 A. Because it was -- because it says this</p> <p>17 transfer is being done for no consideration. It</p> <p>18 was done for consideration. The transfer was for</p> <p>19 consideration. I just think this was an</p> <p>20 administrative error that was done for the State</p> <p>21 Liquor Authority and Canandaigua -- the Consumer</p> <p>22 Department of Protection.</p> <p>23 Q. So do you have any reason to believe</p> <p>24 that the date on this notarized affidavit is</p> <p>25 incorrect?</p>
<p style="text-align: right;">Page 159</p> <p>1 W. Eber</p> <p>2 This is an affidavit and is dated --</p> <p>3 MR. CALIHAN: I can't read it.</p> <p>4 What exhibit is it?</p> <p>5 MR. BROOK: Plaintiffs' Exhibit 8.</p> <p>6 Sorry. I don't have the stickers on there.</p> <p>7 Q. An affidavit dated December 8, 2011 by</p> <p>8 Lester Eber Bates number EB 00020413.</p> <p>9 Do you recognize this document?</p> <p>10 A. I am say slow reader.</p> <p>11 Can I read it?</p> <p>12 MR. RAMSEY: Go ahead. Take your</p> <p>13 time.</p> <p>14 Q. Sure.</p> <p>15 A. Okay.</p> <p>16 Q. Do you recognize this document?</p> <p>17 A. I did see it before, yes.</p> <p>18 Q. When did you see it?</p> <p>19 A. I think my lawyer showed it to me.</p> <p>20 Q. Have you seen it before then?</p> <p>21 A. It may have appeared in Harris Beach's</p> <p>22 papers.</p> <p>23 Q. Did you see this affidavit at or</p> <p>24 around the time that it was signed by Lester?</p> <p>25 A. No.</p>	<p style="text-align: right;">Page 161</p> <p>1 W. Eber</p> <p>2 A. I don't know. I don't know. I just,</p> <p>3 I don't know about when it was done. I was not</p> <p>4 involved in it.</p> <p>5 Q. And other than thinking that it is</p> <p>6 incorrect in stating that the transfer is being</p> <p>7 done for no consideration, is there anything else</p> <p>8 about this that you think is incorrect?</p> <p>9 A. Well, the entity that it was</p> <p>10 transferred to was Alexbay not Lester Eber LLC.</p> <p>11 So I like I said, I was not involved in any of</p> <p>12 this, but it should have been Alexbay LLC. It was</p> <p>13 a mistake.</p> <p>14 Q. Do you know what Alexbay LLC was named</p> <p>15 when it was first created?</p> <p>16 A. Alexbay LLC.</p> <p>17 Q. So you don't know that Alexbay LLC is</p> <p>18 the same thing as Lester Eber LLC?</p> <p>19 A. I wasn't involved in them being -- in</p> <p>20 Alexbay LLC being formed. So I think that it</p> <p>21 should have been Alexbay LLC all along is my</p> <p>22 understanding. Like I said, I think this is a</p> <p>23 typographical error, mistake or something that was</p> <p>24 just a mistake.</p> <p>25 Q. And other than those two mistakes you</p>

<p style="text-align: right;">Page 162</p> <p>1 W. Eber</p> <p>2 now identified, are there any other mistakes on</p> <p>3 this that you believe exist?</p> <p>4 A. Let me just read it one more time.</p> <p>5 Maybe it should be Eber Brothers Wine and Liquor</p> <p>6 Metro.</p> <p>7 Q. You mean it should say the full name</p> <p>8 of the company?</p> <p>9 A. I don't know. I mean you are asking</p> <p>10 me. Maybe it should say Eber Brothers Wine and</p> <p>11 Liquor Metro Inc.</p> <p>12 Q. Is there anything else in terms of the</p> <p>13 description of the facts that you believe is</p> <p>14 incorrect on this exhibit?</p> <p>15 A. No, I think that's it.</p> <p>16 Q. Let's go on to another topic then.</p> <p>17 Mike Gumaer was a director for Eber</p> <p>18 Metro and other Eber entities; correct?</p> <p>19 A. Yes.</p> <p>20 Q. Was he compensated for that role?</p> <p>21 A. As a director?</p> <p>22 Q. Yes.</p> <p>23 A. Well, he was compensated -- he had a</p> <p>24 retainer as a lawyer. On a retainer as a lawyer.</p> <p>25 Q. So what is your basis for saying he</p>	<p style="text-align: right;">Page 164</p> <p>1 W. Eber</p> <p>2 we looked for one for you. I don't believe I -- I</p> <p>3 didn't find one unless you have it somewhere.</p> <p>4 Q. Do you recall seeing when you were</p> <p>5 gathering documents there were records of payments</p> <p>6 between Eber entities and -- or from Eber entities</p> <p>7 to Mike Gumaer?</p> <p>8 MR. CALIHAN: From Eber?</p> <p>9 MR. BROOK: From various Eber entities</p> <p>10 to Mike Gumaer.</p> <p>11 A. Yes, there were some payments to him.</p> <p>12 Q. Did you ever see any payments that</p> <p>13 said in their description that or memo or in just</p> <p>14 an associated file that they were for legal</p> <p>15 services?</p> <p>16 A. You have all the accounting records on</p> <p>17 the hard drives and stuff. You know all that. So</p> <p>18 there maybe something in that, you know.</p> <p>19 Can we go off the record for a second?</p> <p>20 MR. RAMSEY: No.</p> <p>21 A. So we sent you all the accounting</p> <p>22 detail which I did not look through all of that.</p> <p>23 You know, on the hard drives. So it may say legal</p> <p>24 work on that. I don't specifically -- I didn't</p> <p>25 specifically look at every single transaction.</p>
<p style="text-align: right;">Page 163</p> <p>1 W. Eber</p> <p>2 was on a retainer as a lawyer?</p> <p>3 A. That's just my -- actually, that's</p> <p>4 where I learned what the word retainer meant for a</p> <p>5 lawyer. I was just always under the impression</p> <p>6 even as like someone in high school that he was on</p> <p>7 retainer, you know, through my childhood. He was</p> <p>8 a lawyer for the company.</p> <p>9 Q. And I am focusing specifically on the</p> <p>10 time period from say January 2001 forward.</p> <p>11 Is it your understanding he was on</p> <p>12 retainer as a lawyer for Eber Metro during that</p> <p>13 time?</p> <p>14 A. And Eber -- yes, all the Eber</p> <p>15 companies. Yes, he was the lawyer.</p> <p>16 Q. And was there any sort of retainer or</p> <p>17 engagement agreement between any of the Eber</p> <p>18 companies and Mike Gumaer?</p> <p>19 MR. RAMSEY: Form.</p> <p>20 A. He started working with the Eber</p> <p>21 companies you know, like maybe in the sixties or</p> <p>22 seventies. Before I was born probably.</p> <p>23 Q. I am focusing on the time period from</p> <p>24 2001 forward only.</p> <p>25 A. Oh, 2001. I didn't find one. I know</p>	<p style="text-align: right;">Page 165</p> <p>1 W. Eber</p> <p>2 Q. So do you recall what those</p> <p>3 transactions were typically described as in the</p> <p>4 various memos and notes?</p> <p>5 A. What various notes?</p> <p>6 Q. Memos based on a check, for example?</p> <p>7 A. I wasn't doing the checks. You know,</p> <p>8 I mean I am not -- I wasn't the AP clerk doing</p> <p>9 that. I don't know how it was categorized. It</p> <p>10 may have been -- you have all the detail. So I</p> <p>11 don't know specifically.</p> <p>12 Q. Do you have any reason to believe that</p> <p>13 that detail in those financial documents and</p> <p>14 accounting documents that were produced to us</p> <p>15 inaccurately described the basis for payments</p> <p>16 being made by Eber entities to Mike Gumaer?</p> <p>17 MR. RAMSEY: Form.</p> <p>18 Go ahead.</p> <p>19 Q. Sorry. I don't understand the</p> <p>20 question.</p> <p>21 What was the question?</p> <p>22 MR. BROOK: Could you please read back</p> <p>23 the question?</p> <p>24 (Record read.)</p> <p>25 MR. CALIHAN: Objection to form.</p>



<p style="text-align: right;">Page 166</p> <p>1 W. Eber</p> <p>2 A. Just read it one more time. Sorry. I</p> <p>3 am having a hard time with it.</p> <p>4 Q. I will rephrase it at this point.</p> <p>5 A. I thought it was --</p> <p>6 MR. RAMSEY: Let him ask the question.</p> <p>7 Q. Do you have any reason to believe that</p> <p>8 any of the Eber companies financial records</p> <p>9 describe the relationship between those companies</p> <p>10 and Mike Gumaer in an inaccurate way?</p> <p>11 MR. CALIHAN: Objection to form.</p> <p>12 A. What do you mean in an inaccurate way?</p> <p>13 Q. Other than -- you said the</p> <p>14 relationship was an attorney-client relationship;</p> <p>15 is that right?</p> <p>16 A. And yeah, he was an attorney client</p> <p>17 relationship. He also was a trustee. He was a</p> <p>18 director.</p> <p>19 Q. And it was your testimony that he was</p> <p>20 not paid for his work as director; is that right?</p> <p>21 A. It was my understanding that his</p> <p>22 payments were for on retainer, that there was this</p> <p>23 retainer that he would get every year as a lawyer.</p> <p>24 Q. Who described the payments to Mike</p> <p>25 Gumaer as a retainer?</p>	<p style="text-align: right;">Page 168</p> <p>1 W. Eber</p> <p>2 Q. So did you have an understanding that</p> <p>3 he was continuing to be the Eber companies lawyer</p> <p>4 after he was no longer working with Nixon</p> <p>5 Hargrave?</p> <p>6 A. I thought he was our lawyer, yes.</p> <p>7 Q. What was the basis for that</p> <p>8 understanding?</p> <p>9 A. Historically he was a long time lawyer</p> <p>10 of the companies and you know my grandfather and</p> <p>11 my father and me and I spoke to him and relied on</p> <p>12 him as an attorney.</p> <p>13 Q. Was he your personal attorney?</p> <p>14 MR. RAMSEY: Form.</p> <p>15 Q. At any point in time?</p> <p>16 A. He, was he my personal attorney? He</p> <p>17 may have helped me on my will.</p> <p>18 Q. When was that?</p> <p>19 A. Or directed me to someone who -- he</p> <p>20 worked with someone else on my will.</p> <p>21 Q. Was it within the last ten years?</p> <p>22 A. Maybe before the last ten years.</p> <p>23 Q. That's fine.</p> <p>24 A. Maybe before the last ten years.</p> <p>25 MR. RAMSEY: You have to keep your</p>
<p style="text-align: right;">Page 167</p> <p>1 W. Eber</p> <p>2 MR. RAMSEY: Form.</p> <p>3 Go ahead.</p> <p>4 A. This is like a recollection from how I</p> <p>5 learned what the word meant when I was literally</p> <p>6 in high school. That he was the lawyer on</p> <p>7 retainer. So this is how I...</p> <p>8 Q. At some point you learned that Mike</p> <p>9 Gumaer retired from the active practice of law</p> <p>10 with Nixon Hargrave; correct?</p> <p>11 A. No.</p> <p>12 MR. RAMSEY: Form.</p> <p>13 A. Well, I mean that he retired from</p> <p>14 them.</p> <p>15 Could you repeat that?</p> <p>16 Q. I will make it simpler.</p> <p>17 At some point you were made aware that</p> <p>18 he was no longer working for Nixon Hargrave;</p> <p>19 correct?</p> <p>20 MR. RAMSEY: Form.</p> <p>21 MR. CALIHAN: Form.</p> <p>22 Q. He being Mike Gumaer.</p> <p>23 A. Yes. At some point.</p> <p>24 MR. RAMSEY: You answered.</p> <p>25 A. Yeah.</p>	<p style="text-align: right;">Page 169</p> <p>1 W. Eber</p> <p>2 voice up.</p> <p>3 A. It's been a long day.</p> <p>4 MR. CALIHAN: Should we do a break?</p> <p>5 A. Thank you.</p> <p>6 MR. CALIHAN: The deponent seems</p> <p>7 tired.</p> <p>8 THE VIDEOGRAPHER: This marks the end</p> <p>9 of media unit number four in the videotaped</p> <p>10 deposition of Wendy Eber. We are going off</p> <p>11 the record. The time is 3:21.</p> <p>12 (Recess taken.)</p> <p>13 THE VIDEOGRAPHER: This marks the</p> <p>14 beginning of media unit number five in the</p> <p>15 videotaped deposition of Wendy Eber. We are</p> <p>16 going on the record. The time is 3:37.</p> <p>17 BY MR. BROOK:</p> <p>18 Q. Let us mark a new exhibit, Plaintiffs'</p> <p>19 Exhibit 20.</p> <p>20 (Plaintiffs' Exhibit 20, an e-mail</p> <p>21 bearing Bates number EB 00031104, marked for</p> <p>22 identification, as of this date.)</p> <p>23 Q. This is an e-mail bearing Bates number</p> <p>24 EB 00031104. It appears to have been printed by</p> <p>25 you Miss Eber.</p>

<p style="text-align: right;">Page 170</p> <p>1 W. Eber</p> <p>2 Do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. It is from Elliot Gumaer, Mike Gumaer</p> <p>5 to you dated January 9, 2014; correct?</p> <p>6 A. Sorry?</p> <p>7 Q. It is an e-mail from Mike Gumaer to</p> <p>8 you dated January 9, 2014; correct?</p> <p>9 A. Yes.</p> <p>10 Q. And in it it says "Wendy, Happy New</p> <p>11 Year. I look forward to learning the final year</p> <p>12 numbers as we work with you to reach the strategic</p> <p>13 goals. I received a check from Slocum dated</p> <p>14 December 30 in the amount of thirty five hundred</p> <p>15 dollars. The check was addressed to me at</p> <p>16 Nantucket but was mailed to me in Georgia. What</p> <p>17 is the payment covering in the way of an account</p> <p>18 payable? Best to you Mike."</p> <p>19 Do you see that?</p> <p>20 A. Yes.</p> <p>21 Q. What was the payment from Slocum that</p> <p>22 was addressed to Mike Gumaer here?</p> <p>23 A. I thought probably something with the</p> <p>24 retainer where we paid him for legal fees. Every</p> <p>25 so often the company was paying him for legal</p>	<p style="text-align: right;">Page 172</p> <p>1 W. Eber</p> <p>2 A. Not to my knowledge, no.</p> <p>3 Q. Do you know why Mike Gumaer didn't</p> <p>4 understand what the reason was for this check as</p> <p>5 referenced in Exhibit 20?</p> <p>6 A. No. You mean what is the payment</p> <p>7 covering in the way of an account payable? No.</p> <p>8 Q. Did you respond to this e-mail?</p> <p>9 A. I don't remember. I mean I don't</p> <p>10 remember.</p> <p>11 Q. How was this e-mail located for</p> <p>12 purposes of this litigation?</p> <p>13 A. I searched through all the terms that</p> <p>14 you gave me and also looked at all of his e-mails.</p> <p>15 Q. What do you mean by his e-mails?</p> <p>16 A. All of Mike's e-mails.</p> <p>17 Q. Did you also go through your sent</p> <p>18 items folder for items you sent to Mike Gumaer?</p> <p>19 A. They come up, yeah.</p> <p>20 Q. What do you mean they come up?</p> <p>21 A. When you search, yes. It comes up.</p> <p>22 Q. So if there was no reply to this</p> <p>23 e-mail that was produced to us, does that mean</p> <p>24 there was no reply that you found during your</p> <p>25 search?</p>
<p style="text-align: right;">Page 171</p> <p>1 W. Eber</p> <p>2 fees.</p> <p>3 Q. So check from Slocum, does that mean</p> <p>4 Eber Connecticut?</p> <p>5 A. Yeah, mm-hmm.</p> <p>6 Q. So is it your testimony that as of the</p> <p>7 final part of 2013 because this is referring to a</p> <p>8 check dated December 30, 2013, that Mike Gumaer</p> <p>9 was an attorney representing Eber Connecticut?</p> <p>10 MR. CALIHAN: Objection to form.</p> <p>11 A. He was an attorney representing I</p> <p>12 think all of the Eber companies. The check was</p> <p>13 cut from Connecticut though.</p> <p>14 Q. So the Connecticut -- Eber Connecticut</p> <p>15 was paying for Mike Gumaer to represent Eber</p> <p>16 Brothers Wine and Liquor Corp. even though they</p> <p>17 were no longer two companies related to each</p> <p>18 other?</p> <p>19 MR. RAMSEY: Form.</p> <p>20 A. He was representing all the companies.</p> <p>21 So partially I mean it would have been all the</p> <p>22 companies.</p> <p>23 Q. Did Eber Connecticut seek any</p> <p>24 reimbursement from any of the other Eber entities</p> <p>25 for their share of these legal fees?</p>	<p style="text-align: right;">Page 173</p> <p>1 W. Eber</p> <p>2 A. Yeah.</p> <p>3 Q. Did anyone else help you with your</p> <p>4 search of e-mails?</p> <p>5 A. No.</p> <p>6 Q. Did you keep a record of what search</p> <p>7 terms you used?</p> <p>8 A. I used the search terms that were</p> <p>9 given in what you requested.</p> <p>10 Q. How were those search terms conveyed</p> <p>11 to you?</p> <p>12 A. In a document. In the documents that</p> <p>13 were requested.</p> <p>14 Q. So you remember a document in which I</p> <p>15 as plaintiffs' counsel provided search terms for</p> <p>16 you to use; is that right?</p> <p>17 MR. RAMSEY: She is referring to the</p> <p>18 discovery demands.</p> <p>19 A. The discovery demands.</p> <p>20 Q. What you are saying is you looked at</p> <p>21 our discovery demands and based on those you chose</p> <p>22 search terms to run on your e-mail; is that right?</p> <p>23 A. Based on that document I searched the</p> <p>24 terms, yes.</p> <p>25 Q. But you did not keep a record of which</p>

<p style="text-align: right;">Page 174</p> <p>1 W. Eber</p> <p>2 particular terms you searched for based on the</p> <p>3 discovery demands; is that correct?</p> <p>4 A. I did all my searches based on the</p> <p>5 discovery demands and then there were in your</p> <p>6 interrogatories I listed more.</p> <p>7 Q. But if I asked you to write out a list</p> <p>8 of which search terms you ran based on our</p> <p>9 discovery demands, you wouldn't be able to prepare</p> <p>10 that completely, would you?</p> <p>11 A. I would look at your discovery demands</p> <p>12 and based on that.</p> <p>13 Q. So for example, the discovery demands</p> <p>14 included the word the multiple times.</p> <p>15 That doesn't mean that you did a</p> <p>16 search in your e-mail for the word the; correct?</p> <p>17 A. No, I did not do a discovery on the,</p> <p>18 no.</p> <p>19 Q. And --</p> <p>20 A. But you also asked for Alexbay and I</p> <p>21 did a discovery. I am just giving you an example</p> <p>22 of Alexbay. Then you asked for it spelled two</p> <p>23 different ways. Alexbay is one word and then Alex</p> <p>24 bay in two different words and I did that.</p> <p>25 Q. Mike Gumaer resigned from his position</p>	<p style="text-align: right;">Page 176</p> <p>1 W. Eber</p> <p>2 Metro Inc., signed Elliot W Gumaer, Jr."</p> <p>3 Did I read that correctly?</p> <p>4 A. Yes.</p> <p>5 Q. How did you get this document from</p> <p>6 whoever you got it from? First off, who gave this</p> <p>7 to you?</p> <p>8 MR. RAMSEY: Who gave her the e-mail?</p> <p>9 MR. BROOK: Who gave her the scanned</p> <p>10 document? Where did it come from?</p> <p>11 A. The scanned -- this document he may</p> <p>12 have mailed it to me. I don't know.</p> <p>13 Q. And had you discussed his resignation</p> <p>14 with -- had you discussed with Mike his</p> <p>15 resignation separate from receiving this document?</p> <p>16 A. I believe so. I don't remember.</p> <p>17 Q. What did he tell you as far as his</p> <p>18 reason for resigning?</p> <p>19 MR. CALIHAN: I am going to raise an</p> <p>20 objection not to have her not answer. I am</p> <p>21 not objecting to her answering. I want to</p> <p>22 put on the record at that point it is very</p> <p>23 difficult to understand. I couldn't</p> <p>24 understand him generally with some</p> <p>25 exceptions but he had had some medical</p>
<p style="text-align: right;">Page 175</p> <p>1 W. Eber</p> <p>2 as a director of Eber Metro in February 2017.</p> <p>3 Do you recall that?</p> <p>4 A. Somewhere in that neighborhood, yeah.</p> <p>5 MR. BROOK: Let's mark this as 21.</p> <p>6 (Plaintiffs' Exhibit 21, an e-mail</p> <p>7 dated February 7, 2017 from Wendy to Lester</p> <p>8 Eber copying Janet Lissow, marked for</p> <p>9 identification, as of this date.)</p> <p>10 Q. So Exhibit 21 unfortunately has its</p> <p>11 Bates number cut off due to my printer settings I</p> <p>12 guess. This is one of those printed up by folks</p> <p>13 here. Anyhow, it is an e-mail dated February 7,</p> <p>14 2017 from you Wendy to Lester Eber copying Janet</p> <p>15 Lissow and you are forwarding what seems to be a</p> <p>16 scan; is that correct?</p> <p>17 A. Yes.</p> <p>18 Q. And the second page is the document</p> <p>19 that was scanned; is that right?</p> <p>20 A. Yes.</p> <p>21 Q. And it says I, Elliot W. Gumaer, Jr.,</p> <p>22 hereby resign from the, and it has three lines,</p> <p>23 board of directors of Eber Brothers and Co., Inc.,</p> <p>24 board of managers of Eber Connecticut LLC, board</p> <p>25 of directors of Eber Brothers Wine and Liquor</p>	<p style="text-align: right;">Page 177</p> <p>1 W. Eber</p> <p>2 events.</p> <p>3 MR. RAMSEY: So with that pending, the</p> <p>4 question pending is: Do you have an</p> <p>5 understanding of why he resigned?</p> <p>6 MR. BROOK: That is the question.</p> <p>7 MR. RAMSEY: Go ahead.</p> <p>8 A. He may have had some health reasons</p> <p>9 which I recall some conversations with him to</p> <p>10 where he just had -- it was hard to kind of</p> <p>11 understand him.</p> <p>12 MR. BROOK: I would kindly ask counsel</p> <p>13 not to coach the witnesses going forward.</p> <p>14 MR. CALIHAN: That was not intended as</p> <p>15 coaching as I think you know.</p> <p>16 MR. BROOK: Intentions and products</p> <p>17 are sometimes different.</p> <p>18 I would like to just state for the</p> <p>19 record while tomorrow's witness is outside</p> <p>20 the room, you have a standing objection on</p> <p>21 the grounds that he just stated to anything</p> <p>22 that is said in any deposition going forward</p> <p>23 regarding what Mike Gumaer said during the</p> <p>24 last couple of years during his life. That</p> <p>25 way it doesn't have to be repeated with</p>

<p style="text-align: right;">Page 178</p> <p>1 W. Eber 2 other witnesses. 3 MR. CALIHAN: I am fine with that, 4 yeah. 5 BY MR. BROOK: 6 Q. After Mike Gumaer resigned, did Eber 7 Metro attempt to find a replacement director? 8 A. We may have discussed it. 9 Q. Who is we? 10 A. Lester and me. 11 Q. And you made the decision not to find 12 a replacement director; is that right? 13 A. I don't know if we ever decided 14 anything. 15 Q. Did you remember something else? 16 A. Which company were you specifically? 17 Q. We are still on Eber Metro. 18 A. Okay. We may have discussed that. I 19 don't remember. 20 Q. But no replacement director was 21 appointed; correct? 22 A. No. 23 Q. I would like to now ask you about 24 Slocum and Sons of Maine. 25 Did that have any business dealings</p>	<p style="text-align: right;">Page 180</p> <p>1 W. Eber 2 have some spirits too. 3 Q. Why is it that Slocum and Sons of 4 Maine is selling products to Eber Connecticut 5 rather than Eber Connecticut buying directly? 6 A. Okay. So Slocum and Sons of Maine 7 Inc. is an out of -- it is a registered out of 8 state shipper registered with The State of 9 Connecticut. So Slocum and Sons Maine Inc. 10 registers itself with the state for a fee. Some 11 of our smaller suppliers don't want to pay this 12 fee with the state. So the way they do this is 13 they use an out of state shipper instead of the 14 supplier being an out of state shipper. Slocum 15 and Sons of Maine Inc. is the out of state shipper 16 and then our smaller suppliers don't have to pay 17 these fees with The State of Connecticut. It is a 18 passthrough entity. 19 Q. And is Slocum and Sons of Maine a self 20 sufficient company? Does it have its own books 21 and records? 22 A. It has its own books and records, yes. 23 Q. Does it have any employees? 24 A. No. 25 Q. Who operates Slocum and Sons of Maine?</p>
<p style="text-align: right;">Page 179</p> <p>1 W. Eber 2 with Eber Metro? 3 A. No. I mean well. 4 Q. In terms of selling products. 5 A. Can you explain that a little? 6 Between Slocum Maine and Connecticut selling 7 products, yes. That's the relationship. Yes. 8 Q. So Slocum and Sons of Maine sold 9 products to Eber Connecticut; correct? 10 A. Yes. 11 Q. And when did that relationship begin 12 with Slocum and Sons of Maine selling products to 13 Eber Connecticut? 14 A. I don't know. 15 Q. Has it always been a relationship 16 that's existed during your time as an officer of 17 Eber Metro and Eber Connecticut? 18 A. I believe so. I didn't learn about it 19 until 2012 at a later time. 20 Q. What are the types of products that 21 are sold from Slocum and Sons of Maine to Eber 22 Connecticut? 23 A. Wine. 24 Q. Just wine? 25 A. I believe it is mostly wine. It may</p>	<p style="text-align: right;">Page 181</p> <p>1 W. Eber 2 A. It's a passthrough entity which is 3 maintained by our CFO. 4 Q. Does the CFO receive any compensation 5 for doing that? 6 A. No. 7 Q. So who places orders for Slocum and 8 Sons of Maine to buy products? 9 A. I don't know all the details. My 10 understanding is that the purchase order is placed 11 by Connecticut, Eber Connecticut. The inventory 12 is received into Connecticut. There is a payment 13 made from Connecticut to Maine and then Maine pays 14 the supplier, but I don't know all of the exact 15 entries made. It's a passthrough entity where 16 there is no markup. So it eliminates the supplier 17 from registering with the state as an out of state 18 shipper and they don't have to pay the fee. Many 19 of our competitors set up similar companies to 20 eliminate this expense for the supplier. 21 RQ MR. BROOK: Now to go ahead and just 22 put on the record a request for the general 23 ledger for Eber, I am sorry, for Slocum and 24 Sons. 25 A. You have it.</p>

<p style="text-align: right;">Page 182</p> <p>1 W. Eber</p> <p>2 Q. Is that one of the recently produced</p> <p>3 documents?</p> <p>4 A. No. That was produced in August when</p> <p>5 you required all of our general ledgers for the</p> <p>6 last ten years for your accountant to review it</p> <p>7 and it was in a specific format that you gave us</p> <p>8 which we spent a very long time getting for you.</p> <p>9 MR. BROOK: So the witness' answer is</p> <p>10 noted and my request remains on the record.</p> <p>11 MR. RAMSEY: Okay.</p> <p>12 Q. So have you ever made any money off of</p> <p>13 owning a 50 percent of Slocum of Maine?</p> <p>14 A. I received one check for ten thousand</p> <p>15 dollars.</p> <p>16 Q. When was that?</p> <p>17 A. I believe it was 2013. That was one</p> <p>18 check. But it is essentially a company that</p> <p>19 doesn't really make or lose money. It is very</p> <p>20 immaterial amounts. You have copies of all the</p> <p>21 K-1s.</p> <p>22 Q. Sure.</p> <p>23 Now the ten thousand dollar payment to</p> <p>24 you, that was not reported on a K-1; correct?</p> <p>25 A. I am not sure. No. That was -- it</p>	<p style="text-align: right;">Page 184</p> <p>1 W. Eber</p> <p>2 wouldn't be willing to just transfer ownership of</p> <p>3 Slocum of Maine to Eber Metro with no</p> <p>4 consideration?</p> <p>5 MR. RAMSEY: Form.</p> <p>6 A. I don't know if it makes a difference.</p> <p>7 Q. Is Slocum of Maine an important part</p> <p>8 of the Eber Connecticut business?</p> <p>9 MR. RAMSEY: Form.</p> <p>10 A. I don't believe so, no.</p> <p>11 Q. If Slocum of Maine wasn't there to act</p> <p>12 as the out of state shipper into Connecticut, do</p> <p>13 you believe that the volume of sales of wine would</p> <p>14 decrease for Eber Connecticut?</p> <p>15 A. No. What I believe that this is a</p> <p>16 passthrough entity which is only done to</p> <p>17 accommodate certain suppliers so they don't have</p> <p>18 to pay a fee of registering with the state.</p> <p>19 MR. RAMSEY: The question was though</p> <p>20 do you think the volume of wine would</p> <p>21 decrease?</p> <p>22 THE WITNESS: In Connecticut.</p> <p>23 MR. RAMSEY: Yes. If there wasn't a</p> <p>24 relationship with Slocum of Maine.</p> <p>25 A. Do I think no, I mean you could just</p>
<p style="text-align: right;">Page 183</p> <p>1 W. Eber</p> <p>2 may have been. I don't know the tax.</p> <p>3 Q. What was the reason for the ten</p> <p>4 thousand dollar check to you?</p> <p>5 A. I think one -- I don't know. I don't</p> <p>6 know. I don't know.</p> <p>7 Q. Was there a ten thousand dollar check</p> <p>8 for anyone else besides you?</p> <p>9 A. I believe Lester got a ten thousand</p> <p>10 dollar check as well.</p> <p>11 Q. Who authorized those checks to be</p> <p>12 issued?</p> <p>13 A. Our CFO Wally Crumb.</p> <p>14 Q. Did he keep any records why those</p> <p>15 checks were issued?</p> <p>16 A. He has -- you have all the financial</p> <p>17 data. So yes, I believe he has.</p> <p>18 Q. Why is it that Slocum and Sons of</p> <p>19 Maine came to be owned by you and Lester directly</p> <p>20 rather than being owned by one of the corporate</p> <p>21 entities such as Eber Metro?</p> <p>22 MR. CALIHAN: Objection to form.</p> <p>23 A. I don't know.</p> <p>24 Q. Since you don't make any money from</p> <p>25 Slocum of Maine, is there any reason why you</p>	<p style="text-align: right;">Page 185</p> <p>1 W. Eber</p> <p>2 another passthrough or something. I am not</p> <p>3 entirely certain it is needed.</p> <p>4 MR. RAMSEY: Okay.</p> <p>5 A. I don't know all the details of the</p> <p>6 law. I didn't -- I don't know all the details of</p> <p>7 the Connecticut state law with regard to wine and</p> <p>8 spirits.</p> <p>9 Q. Is it difficult to become registered</p> <p>10 as an out of state shipper in Connecticut?</p> <p>11 A. I don't know. As an out of state</p> <p>12 shipper I don't know.</p> <p>13 Q. And that's because Slocum of Maine was</p> <p>14 already registered when you acquired it; is that</p> <p>15 right?</p> <p>16 A. They were registered, yes.</p> <p>17 Q. Are there annual fees or registration</p> <p>18 forms that need to be filed in connection with</p> <p>19 maintaining that out of state shipper license?</p> <p>20 A. There maybe. I am not really that</p> <p>21 involved in it. Our CFO handles most of it.</p> <p>22 Handles it. So I am just not that involved. It</p> <p>23 is more administration.</p> <p>24 MR. BROOK: Let's go to another</p> <p>25 exhibit. I just want to go through a few of</p>




<p style="text-align: right;">Page 186</p> <p>1 W. Eber</p> <p>2 these and make sure we know what they are.</p> <p>3 We are up to 22. Yes.</p> <p>4 (Plaintiffs' Exhibit 22, a document</p> <p>5 that was received in discovery entitled Eber</p> <p>6 Brothers Wine and Liquor Metro Inc. General</p> <p>7 Ledger All Transactions, marked for</p> <p>8 identification, as of this date.)</p> <p>9 Q. Exhibit 22 is a document that was</p> <p>10 received in discovery entitled Eber Brothers Wine</p> <p>11 and Liquor Metro Inc. General Ledger All</p> <p>12 Transactions.</p> <p>13 Do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. Do you recognize this document?</p> <p>16 A. I got it for discovery, for your</p> <p>17 discovery, yes.</p> <p>18 Q. Where did you get it?</p> <p>19 A. From Davie Kaplan our accountant.</p> <p>20 Q. And you mentioned before Sumner Persol</p> <p>21 as an accountant too.</p> <p>22 What's the difference between Davie</p> <p>23 Kaplan and Sumner Persol in terms of what they</p> <p>24 have done for Eber Metro?</p> <p>25 A. So Davie Kaplan was the accountant and</p>	<p style="text-align: right;">Page 188</p> <p>1 W. Eber</p> <p>2 account number 8110 right off of intangible</p> <p>3 assets.</p> <p>4 Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. And it refers to a general journal</p> <p>7 entry dated -- that was entered for the date of</p> <p>8 May 31, 2011.</p> <p>9 Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. It says "To write off intangible</p> <p>12 assets per Brian Connetta."</p> <p>13 Do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. And it refers to a debit of 14 million</p> <p>16 dollars that appears to have been taken from the</p> <p>17 goodwill account; is that correct?</p> <p>18 A. Yes.</p> <p>19 Q. What is that line item about?</p> <p>20 A. You know, I am not exactly -- I don't</p> <p>21 exactly remember. I have a vague recollection of</p> <p>22 the intangible asset as being written down</p> <p>23 possibly from Metro or Connecticut. I am not</p> <p>24 sure. I don't remember all the details around it.</p> <p>25 Q. I am not asking for all the details.</p>
<p style="text-align: right;">Page 187</p> <p>1 W. Eber</p> <p>2 auditor of all of the Eber entities going back</p> <p>3 before my time.</p> <p>4 Sumner Persol actually used to work at</p> <p>5 Davie Kaplan, but he handled all the taxes for the</p> <p>6 Eber entities except not the taxes for Slocum of</p> <p>7 Maine.</p> <p>8 Q. Who handled the taxes for Slocum of</p> <p>9 Maine?</p> <p>10 A. I believe it is Bloom Shapiro which is</p> <p>11 Connecticut auditor, tax accounting firm.</p> <p>12 Q. Does Slocum of Maine have any actual</p> <p>13 locations or operations in The State of Maine?</p> <p>14 A. It has a mailbox in Maine.</p> <p>15 Q. And nothing else?</p> <p>16 A. It has a bank account. I am not sure</p> <p>17 if that's a Maine bank account or not.</p> <p>18 Q. So --</p> <p>19 A. If it is located in Maine or not.</p> <p>20 Q. And does it file taxes in The State of</p> <p>21 Maine?</p> <p>22 A. I don't know. It files taxes. I</p> <p>23 don't know if it files in The State of Maine.</p> <p>24 Q. I would like you to turn to the very</p> <p>25 last page on this. The second line item is</p>	<p style="text-align: right;">Page 189</p> <p>1 W. Eber</p> <p>2 What do you remember about the reason</p> <p>3 why a 14 million dollar adjustment was made in</p> <p>4 this instance?</p> <p>5 A. I don't remember that much about the</p> <p>6 details. I do know the companies were in severe</p> <p>7 financial distress.</p> <p>8 Q. And --</p> <p>9 A. And I think Brian either worked with</p> <p>10 Sumner Persol or Davie Kaplan. So I would have</p> <p>11 worked with them on that.</p> <p>12 Q. So is it typically the case that when</p> <p>13 an accountant makes an adjustment to your books</p> <p>14 that the memo will state which particular</p> <p>15 accountant said to do that?</p> <p>16 A. I don't know. None of these -- I</p> <p>17 don't know if this was -- I don't know. I am not</p> <p>18 really -- I would talk to Davie Kaplan or Sumner</p> <p>19 about it with more specifics because they would be</p> <p>20 very well aware, but we were in severe financial</p> <p>21 distress.</p> <p>22 Q. And what does the financial distress</p> <p>23 have to do with the amount of goodwill that's</p> <p>24 booked on the balance sheet?</p> <p>25 A. You know intangible asset being</p>

<p style="text-align: right;">Page 190</p> <p>1 W. Eber</p> <p>2 written down. It is not what you once thought it</p> <p>3 was.</p> <p>4 Q. So this was recording your change</p> <p>5 belief in the goodwill value of the Eber</p> <p>6 Connecticut business; is that correct?</p> <p>7 MR. RAMSEY: Form.</p> <p>8 A. I don't remember all the details</p> <p>9 around it. I would like to look at some of the --</p> <p>10 I would like to talk to Sumner and Davie Kaplan</p> <p>11 because I am sure they were involved in it. I</p> <p>12 just don't remember. It's a lot of years.</p> <p>13 MR. BROOK: I would just note for the</p> <p>14 record that we are not asking you to talk to</p> <p>15 the accountants. We are anticipating</p> <p>16 deposing them ourselves and I think it would</p> <p>17 be our preference if there was not</p> <p>18 discussions with individuals who are not</p> <p>19 actively involved in accounting matters that</p> <p>20 could affect their testimony.</p> <p>21 MR. RAMSEY: Noted.</p> <p>22 BY MR. BROOK:</p> <p>23 Q. Do you recall that Davie Kaplan never</p> <p>24 actually finished preparing a balance sheet or a</p> <p>25 P&amp;L for Eber Metro for the fiscal year ending May</p>	<p style="text-align: right;">Page 192</p> <p>1 W. Eber</p> <p>2 A. I believe so.</p> <p>3 Q. And do you see that in the second</p> <p>4 e-mail from the bottom you stated "I need the</p> <p>5 financial statements i.e., income statement and</p> <p>6 balance sheet for 2012 for Metro Inc. Sorry. Do</p> <p>7 you have it? If not that is okay since I have tax</p> <p>8 return." And then in response Jeanne said "Oh, no</p> <p>9 we don't. We never finished 5/31/12."</p> <p>10 Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. Does that refresh your recollection</p> <p>13 that Davie Kaplan never completed the books for</p> <p>14 Eber Metro for the time period June 1, 2011</p> <p>15 through May 31, 2012?</p> <p>16 A. Okay.</p> <p>17 Q. Do you now remember that that is what</p> <p>18 happened?</p> <p>19 A. Not -- I mean this is basically saying</p> <p>20 it. I don't remember the e-mail, but okay.</p> <p>21 Q. Do you know why it was that the</p> <p>22 accounting records were never completed for that</p> <p>23 entire fiscal year?</p> <p>24 A. Well, there weren't a lot of</p> <p>25 transactions happening and the companies didn't</p>
<p style="text-align: right;">Page 191</p> <p>1 W. Eber</p> <p>2 31, 2012?</p> <p>3 A. I don't remember.</p> <p>4 Q. Let's mark this and see if it</p> <p>5 refreshes your recollection.</p> <p>6 (Plaintiffs' Exhibit 23, an e-mail</p> <p>7 chain between Wendy Eber and Jeanne</p> <p>8 Stockmaster on July 29th and 30, 2013,</p> <p>9 marked for identification, as of this date.)</p> <p>10 Q. I am showing you what has been marked</p> <p>11 as Exhibit 23. It appears to be an e-mail chain</p> <p>12 between you and someone named Jeanne Stockmaster</p> <p>13 on July 29th and 30, 2013.</p> <p>14 Do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. Who is Jeanne Stockmaster?</p> <p>17 A. Jeanne was a staff accountant who was</p> <p>18 keeping the books from Davie Kaplan for Eber</p> <p>19 Brothers companies.</p> <p>20 Q. So is she the person that maintained</p> <p>21 the general ledger that we were just looking at</p> <p>22 Exhibit 22?</p> <p>23 A. I believe so, yes.</p> <p>24 Q. And that was maintained on a</p> <p>25 QuickBooks file?</p>	<p style="text-align: right;">Page 193</p> <p>1 W. Eber</p> <p>2 have any money. So you know, basically it was</p> <p>3 Sumner who was basically doing all of the</p> <p>4 accounting because it just, you know, it is not a</p> <p>5 -- these are companies that aren't doing a lot of</p> <p>6 transactions. So it might just be taking one</p> <p>7 balance and nothing happened that year. So you</p> <p>8 are just taking that balance and moving it to the</p> <p>9 next year for the tax return.</p> <p>10 So I just think that it wasn't, there</p> <p>11 weren't just a tremendous amount of transactions</p> <p>12 happening and you know, as you know it was a</p> <p>13 disaster where there is really no money. So why</p> <p>14 would you spend money for someone to do something</p> <p>15 when nothing is really happening. You know there</p> <p>16 was not a lot of transaction.</p> <p>17 Q. So for fiscal year ending May 31, 2012</p> <p>18 and all the years since, is it your testimony that</p> <p>19 all the accounting for tax purposes was being done</p> <p>20 by Sumner Persol?</p> <p>21 A. He was doing the accounting for -- he</p> <p>22 was doing this, excuse me. He was doing the taxes</p> <p>23 always. He was always doing the taxes.</p> <p>24 Q. But he actually started doing the</p> <p>25 accounting side of it too; is that correct?</p>

<p style="text-align: right;">Page 194</p> <p>1 W. Eber</p> <p>2 A. Yes, because there just weren't a lot</p> <p>3 of transactions. It was just maintaining balances</p> <p>4 I think, you know. So he would have a detail on</p> <p>5 everything.</p> <p>6 Q. And in responding to our discovery</p> <p>7 requests in this case, did you request the</p> <p>8 accounting records maintained by Sumner Persol for</p> <p>9 Eber Metro?</p> <p>10 A. I requested all the tax returns from</p> <p>11 him. So you would have all the tax returns.</p> <p>12 Q. My question was focused on the</p> <p>13 accounting since that was being done by Sumner</p> <p>14 Persol.</p> <p>15 A. You requested, your requests were</p> <p>16 specifically for Connecticut where you wanted ten</p> <p>17 years of data for Connecticut that we put on the</p> <p>18 hard drive and then you needed a particular format</p> <p>19 that we then gave that to you for Connecticut.</p> <p>20 Then you requested, my understanding was the</p> <p>21 general ledgers like this. I don't know if he is</p> <p>22 maintaining general ledgers like this and I don't</p> <p>23 remember the exact dates but we can get it from</p> <p>24 him if you want.</p> <p>25 RQ MR. BROOK: I will clarify my request</p>	<p style="text-align: right;">Page 196</p> <p>1 W. Eber</p> <p>2 Herbert and Eber Metro?</p> <p>3 A. He is counsel.</p> <p>4 Q. So he is you mean by that an attorney?</p> <p>5 A. Yeah.</p> <p>6 Q. And is he compensated for that work by</p> <p>7 Eber Metro or another entity?</p> <p>8 A. I don't remember. I may have asked</p> <p>9 Underberg Kessler as well.</p> <p>10 MR. BROOK: I have a bunch of</p> <p>11 documents here, but we will start with one</p> <p>12 for now and see how that goes.</p> <p>13 Mark this as 24.</p> <p>14 (Plaintiffs' Exhibit 24, a document</p> <p>15 bearing Bates stamp EB 00020191 entitled</p> <p>16 Eber Brothers Wine and Liquor Metro Inc.</p> <p>17 Profit and Loss Collapse June 2007 through</p> <p>18 May 2008, marked for identification, as of</p> <p>19 this date.)</p> <p>20 Q. Plaintiffs' Exhibit 24 is in front of</p> <p>21 you. It is a document bearing Bates stamp EB</p> <p>22 00020191. It is entitled Eber Brothers Wine and</p> <p>23 Liquor Metro Inc. Profit and Loss Collapse June</p> <p>24 2007 through May 2008.</p> <p>25 Do you see that?</p>
<p style="text-align: right;">Page 195</p> <p>1 W. Eber</p> <p>2 that it was general ledger or substantive</p> <p>3 equivalent for every year preferably done on</p> <p>4 a annual basis so they can be checked</p> <p>5 against the tax return numbers.</p> <p>6 MR. RAMSEY: Okay.</p> <p>7 Q. Even Metro having so few transactions,</p> <p>8 have you considered simply shutting Eber Metro</p> <p>9 down and finding another way to structure the</p> <p>10 organization to avoid having the entity involved</p> <p>11 at all?</p> <p>12 MR. RAMSEY: Form.</p> <p>13 A. Have I considered that?</p> <p>14 Q. Has Eber Metro considered doing that?</p> <p>15 A. Yes.</p> <p>16 Q. And why has that not been done?</p> <p>17 A. I was on advice of counsel.</p> <p>18 Q. And I am not asking for what the</p> <p>19 advice specifically was, but which counsel are you</p> <p>20 referring to?</p> <p>21 A. What do you mean?</p> <p>22 Q. You said advice of counsel.</p> <p>23 Who are you talking about?</p> <p>24 A. John Herbert.</p> <p>25 Q. What is the relationship between John</p>	<p style="text-align: right;">Page 197</p> <p>1 W. Eber</p> <p>2 A. Yes.</p> <p>3 Q. And is it correct this appears to have</p> <p>4 been printed on July 31, 2013 in the upper left?</p> <p>5 A. I see that date, yeah.</p> <p>6 Q. Where did this document come from?</p> <p>7 A. I am not sure. Maybe Davie Kaplan. I</p> <p>8 don't know.</p> <p>9 MR. RAMSEY: Keep your voice up.</p> <p>10 A. I don't know. I am not sure. Davie</p> <p>11 Kaplan. I am not sure.</p> <p>12 Q. And so this is a document. It</p> <p>13 indicates there is 1.975,000 dollars in income in</p> <p>14 that time period June '07 through May '08.</p> <p>15 Do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. Do you know what that source of that</p> <p>18 income was?</p> <p>19 A. Not specifically unless you can see</p> <p>20 the detail accounts.</p> <p>21 Q. Are there detail accounts available</p> <p>22 for that particular year?</p> <p>23 A. I don't know. I mean these aren't</p> <p>24 audited numbers or anything. We could -- what</p> <p>25 year was this? This was -- this goes back. So it</p>

50 (Pages 194 - 197)

<p style="text-align: right;">Page 198</p> <p>1 W. Eber</p> <p>2 might be something that you could go back to this</p> <p>3 document and reconcile it back.</p> <p>4 Q. So how do you go about doing that?</p> <p>5 A. It's been a long time since I was an</p> <p>6 auditor Brian. You want me to look into it and</p> <p>7 get you, how to reconcile back. I mean I have an</p> <p>8 idea of what this maybe, but I am not certain.</p> <p>9 Q. So turn to page 10 of Exhibit 22.</p> <p>10 A. Yeah.</p> <p>11 Q. That's the general ledger?</p> <p>12 A. Okay.</p> <p>13 Q. You see there is the same account</p> <p>14 number for income three thousand is towards the</p> <p>15 bottom of that page?</p> <p>16 A. What page?</p> <p>17 Q. Page 10.</p> <p>18 A. Yes.</p> <p>19 Q. And there is a memo there that says</p> <p>20 "To reverse portion of journal entry-PBC, unsure</p> <p>21 of nature of adjustment."</p> <p>22 Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. And actually I added in some words,</p> <p>25 ADJ, the letters ADJ.</p>	<p style="text-align: right;">Page 200</p> <p>1 W. Eber</p> <p>2 became the CFO but none of these are audited</p> <p>3 statements to go on the record.</p> <p>4 MR. BROOK: I think since we, as we</p> <p>5 discussed it was off the record. We are</p> <p>6 coming back. Rob wanted to use a little bit</p> <p>7 of time to ask some questions today.</p> <p>8 MR. CALIHAN: Excuse me?</p> <p>9 MR. BROOK: Did you want to use some</p> <p>10 time today?</p> <p>11 MR. CALIHAN: No. I have two minutes</p> <p>12 of questions. I will wait until the end.</p> <p>13 Thank you.</p> <p>14 MR. BROOK: Why don't we go ahead and</p> <p>15 I think this is a good breaking point to</p> <p>16 pause for today.</p> <p>17 (Continued on the next page.)</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 199</p> <p>1 W. Eber</p> <p>2 Is that likely meaning adjustment in</p> <p>3 QuickBooks or accounting terms?</p> <p>4 A. I don't know. I have never used</p> <p>5 QuickBooks. I don't know.</p> <p>6 Q. You were the CFO of the company.</p> <p>7 How do you understand ADJ?</p> <p>8 A. Adjustment.</p> <p>9 Q. And so after seeing that memo, does</p> <p>10 that help you understand where that recorded</p> <p>11 income is coming from?</p> <p>12 A. Maybe from the reversal of this</p> <p>13 adjustment. I don't know. I would refer back to</p> <p>14 Davie Kaplan and ask them. I don't know.</p> <p>15 Q. Is it correct that for the fiscal year</p> <p>16 ending May 2008 you were the CFO for Eber Metro?</p> <p>17 A. Yes, but I -- wait. The fiscal year</p> <p>18 2008. When did I become the CFO? I may have not</p> <p>19 become -- I am not sure when I became the CFO.</p> <p>20 Was it October of 2008? I don't remember.</p> <p>21 MR. RAMSEY: Do you remember whether</p> <p>22 you were CFO at the end of 2008?</p> <p>23 THE WITNESS: This is May 2008. I am</p> <p>24 not -- I think I might have been October. I</p> <p>25 am not sure of the exact dates of when I</p>	<p style="text-align: right;">Page 201</p> <p>1 W. Eber</p> <p>2</p> <p>3 THE VIDEOGRAPHER: This marks the end</p> <p>4 of media unit number five in the videotaped</p> <p>5 deposition of Wendy Eber. We are going off</p> <p>6 the record. The time is 4:28.</p> <p>7 (Time Noted: 4:28 p.m.)</p> <p>8</p> <p>9</p> <p>10 WENDY EBER</p> <p>11</p> <p>12 Subscribed and sworn to before me</p> <p>13 this day of , 2019.</p> <p>14</p> <p>15</p> <p>16 (Notary Public) My Commission Expires:</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

<p style="text-align: right;">Page 202</p> <p>1 2           C E R T I F I C A T E 3 STATE OF NEW YORK   )                                   : ss. 4 COUNTY OF NEW YORK   ) 5           I, LYNNE D. METZ, a Shorthand Reporter 6 and a Notary Public within and for the State of 7 New York, do hereby certify that the foregoing 8 deposition of WENDY EBER was taken before me on 9 the 23rd day of January, 2019; 10           That the said witness was duly sworn 11 before the commencement of her testimony; that the 12 said testimony was taken stenographically by me 13 and then transcribed. 14           I further certify that I am not 15 related by blood or marriage to any of the parties 16 to this action or interested directly or 17 indirectly in the matter in controversy; nor am I 18 in the employ of any of the counsel in this 19 action. 20           IN WITNESS WHEREOF, I have hereunto 21 set my hand this 11th day of February, 2019. 22 23 24            25           LYNNE D. METZ</p>	<p style="text-align: right;">Page 204</p> <p>1 2 of Lester Eber's Payments For 3 Liabilities of Eber Brothers W and L 4 Corp. Bates number EB 00020333 as 5 Plaintiffs' Exhibit 12 6 Exhibit 13, a document entitled Line of 71 7 Credit Note bearing Bates numbers EB 8 00017871 through 73, as well as Bates 9 numbers KSH 00001 through 3 10 Exhibit 14, a document entitled Stock 96 11 Purchase Agreement Bates stamped 12 EB-00020488 to 492 13 Exhibit 15, a security agreement dated 120 14 as of February 26, 2010 between Eber 15 Brothers Wine and Liquor Corp. And Eber 16 Metro in favor of Lester Eber bearing 17 Bates numbers CNB 000055 through 68 18 Exhibit 16, a copy of a line of credit 126 19 note 20 Exhibit 17, Debt Assumption Agreement 131 21 dated as of February 11, 2011 between 22 Eber Brothers Wine and Liquor and Eber 23 Metro and Lester Eber Bates number CNB 24 000072 through 74 25 Exhibit 18, the amended and restated 143</p>
<p style="text-align: right;">Page 203</p> <p>1 2 January 23, 2019 3 4           I N D E X 5 WITNESS           EXAMINATION BY   PAGE 6 WENDY EBER       MR. BROOK       7 7 8 ----- INFORMATION REQUESTS ----- 9 DIRECTIONS (DI):   None 10 INSERT:           None 11 RULINGS (RL):       None 12 REQUESTS (RQ):     98, 104, 105, 140, 181, 194 13 CERTIFIED (CE):    None 14 MOTIONS (MO):     None 15 16           E X H I B I T S 17 Plaintiffs' Exhibits           For ID 18 Exhibit 10, a copy of the deposition 10 19 notice for today's deposition 20 Exhibit 11, a document that's described 35 21 at the top as current corporate 22 structure of Eber Brothers Wine and 23 Liquor Corporation and its operating 24 affiliates 25 Exhibit 12, a document called Summary 67</p>	<p style="text-align: right;">Page 205</p> <p>1 2 security agreement with Bates numbers 3 EB 00018379 through 392 4 Exhibit 19, board meeting minutes 144 5 bearing Bates number EB 00016953 6 Exhibit 20, an e-mail bearing Bates 169 7 number EB 00031104 8 Exhibit 21, an e-mail dated February 7, 175 9 2017 from Wendy to Lester Eber copying 10 Janet Lissow 11 Exhibit 22, a document that was 186 12 received in discovery entitled Eber 13 Brothers Wine and Liquor Metro Inc. 14 General Ledger All Transactions 15 Exhibit 23, an e-mail chain between 191 16 Wendy Eber and Jeanne Stockmaster on 17 July 29th and 30, 2013 18 Exhibit 24, a document bearing Bates 196 19 stamp EB 00020191 entitled Eber 20 Brothers Wine and Liquor Metro Inc. 21 Profit and Loss Collapse June 2007 22 through May 2008 23 (Exhibits retained by counsel.) 24 25</p>